No. 94269-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EL CENTRO DE LA RAZA, a Washington non-profit corporation; LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS 609; AEROSPACE MACHINISTS UNION, IAM&AW DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION 21; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL NO. 28; WAYNE AU, PH.D., on his own behalf and on behalf of his minor child; PAT BRAMAN, on her own behalf; and DONNA BOYER, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

BRIEF OF APPELLANTS

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I. INTRODUCTION

For more than 125 years, the Washington Constitution has provided for a single general and uniform public school system, at the center of which are common schools that provide a general education to the State's children and that are adequately funded from restricted funding sources. In 2012, Initiative Measure No. 1240 ("I-1240") attempted to add charter schools to the State's common school system and to pay for charter schools from state funds restricted to common schools under of Article IX of the Constitution. In *League of Women Voters v. State*, 184 Wn.2d 393, 405, 355 P.3d 1131 (2015) ("*LWV*"), the Court held that charter schools are not common schools within the meaning of Article IX because "charter schools under I-1240 are run by an appointed board or nonprofit organization and thus are not subject to local voter control[.]" The Court further held that I-1240 diverted restricted common school funds from the State's General Fund to charter schools on the same basis as common schools in violation of Article IX. Thus, the Court ruled I-1240's privately operated but publicly funded charter school system was unconstitutional.

Following *LWV*, the Legislature tweaked the charter school system established by I-1240 by enacting the Charter School Act, Laws of 2016, Ch. 241 ("Charter School Act" or "Act"). But these tweaks are mere artifice, not substantive changes, that fail to fix the constitutional problems

of charter schools. Like I-1240, the Act creates a parallel system of publicly funded, privately operated charter schools that are not uniform with the common schools but play the same role in the State's public school system. The Constitution does not allow the Legislature to create an alternative set of privately run schools to supplant common schools.

Further, the Legislature relied on an accounting trick to obscure the Act's continued diversion of constitutionally protected funds to support charter schools. Charter schools continue to be funded on the same basis as common schools. Although the Act purports to fund charter schools directly from an account separate from the General Fund, the Legislature did not raise new revenue or decrease funding for other programs as would be necessary to prevent the diversion of protected funds. Instead, as confirmed by the legislative history and the recent budget, the Legislature is paying for the exponentially growing costs of charter schools by indirectly relying on the General Fund.

Finally, the Act repeats the other constitutional violations raised, but not addressed by this Court, in *LWV*. The Act violates the constitutional provision requiring the Superintendent of Public Instruction ("Superintendent") to have supervision over public schools. In addition, the Act impedes the State's paramount duty to fund fully public schools,

unconstitutionally delegates authority to set education standards to private entities, and violates Article II, Section 37.

For these reasons, this Court should declare the Charter School Act unconstitutional in its entirety.

II. ASSIGNMENTS OF ERROR

A. Whether the Act violates article IX, section 2's requirement that the Legislature provide a "general and uniform" public school system because it establishes a parallel system of publicly funded schools serving the same general population of common school students, but controlled by private organizations and exempt from uniform common school laws.

B. Whether the Act violates article IX, section 2, because funding for up to 40 charter schools over the five-year term provided for under the Act requires the unconstitutional diversion of restricted state funds to support charter schools.

C. Whether the Act violates the State's paramount duty to make ample provision for education under article IX, section 1, by diverting money from inadequately funded public schools.

D. Whether the Act unconstitutionally delegates the State's paramount duty under article IX, section 1, because it allows private organizations to define the components of a constitutionally adequate program of basic education.

E. Whether the Act violates article III, section 22, because it provides that a Charter Commission, rather than the Superintendent, supervises certain charter schools.

F. Whether the Act violates article II, section 37, by revising the state collective bargaining laws and the Basic Education Act without setting forth those revisions and amendments in full.

G. Whether the organizational plaintiffs have representational standing based on the taxpayer status of the organizations' members (in addition to the other bases for standing acknowledged by the trial court).

III. STATEMENT OF THE CASE

Most fundamentally, this case raises the issue of whether the Legislature can adopt non-substantive fixes to address the substantive constitutional problems with the charter school system established under I-1240. Does changing the characterization of charter schools from "common schools" to an "alternative" to common schools and changing the funding for charter schools from direct payments out of the General Fund to indirect payments from the General Fund cure I-1240's constitutional defects? The text and undisputed history of the Constitution's education provisions demonstrates that the answer is no.

A. Washington's Founders Develop a Uniform System of Common Schools Supplemented by Specialized Schools.

Since territorial times, the common schools have been at the heart of Washington's public education system. During its first session, the territorial legislature established a system of common schools to provide a basic education to the general student population. *See* Laws of 1854, ch. 1-4. They were open to all children and controlled by the local voters through an elected board of directors. *Id*. During subsequent sessions, the territorial legislature supplemented the common schools with various specialized public schools. *See, e.g.*, Laws of 1865, Memorials at 222-23 (agricultural college); Laws of 1885, at 136-41 (school for deaf, mute, blind, and feeble-minded youth); Dennis C. Troth, *History and Development of Common School Legislation in Washington* 159 (Univ. of Wash. Pubs. in Social Sciences 1929 ("Troth") (high schools offering an advanced education that during territorial times was not considered necessary for the majority of citizens). These specialized schools were publicly funded but, unlike common schools, did not offer a general basic education program to all students. *See id.* Instead, the schools provided specialized programs to meet the needs of discrete populations. *Id.*

The early common schools floundered due to the lack of reliable funding and inconsistency in course offerings, teacher qualifications, and

discipline. *See* Thomas William Bibb, *History of Early Common School Education in Washington* 73-79 (Univ. of Wash. Pubs. in Social Sciences 1929) ("Bibb"); Troth at 88. The territorial legislature enacted a series of reforms that established the hallmark features of common schools as we know them today, including uniform laws and rules establishing a minimum educational program; centralized supervision of the schools by an elected Superintendent; and local voter control (through elected school boards) over the day-to-day management of common schools. *See* Bibb at 145.

B. The Delegates Draft a Constitution Establishing Common Schools as the Centerpiece of a Single, Uniform Public School System.

By the time the constitutional convention convened in 1889, the framework of Washington's public education system was "well molded[.]" Bibb at 144. Convention leaders believed a well-organized uniform public school system with common schools under local voter control was essential to ensure that an adequate education was offered to all children across the state. Troth at 115. Rejecting vague laudatory language found in most state constitutions, the delegates drafted an education article declaring: "It is the paramount duty of the state to make ample provision for the education of all children residing within its

borders[.]" Const. art. IX, § 1; *Seattle Sch. Dist. No. 1. v. State*, 90 Wn.2d 476, 498, 585 P.2d 71 (1978) (surveying state constitutions).

The delegates wrote into the Constitution a uniform public school system mirroring the structure developed by the territorial legislature. The framers required the Legislature to establish common schools as the mandatory component of the public education system. Const. art. IX, § 2. Further, the delegates authorized the Legislature to supplement the common schools with "high schools, normal schools, and technical schools[.]" *Id*. They also specifically provided for state institutions for "blind, deaf, dumb, or otherwise defective youth" and for "the insane or idiotic[.]" Const. art. XIII, § 1 (1889).[2] The delegates placed "all matters pertaining to public schools" under the supervision of an elected Superintendent, Const. art. III, § 22, finding the risks inherent in local experimentation far outweighed the drawbacks of centralized control, *see* Louis Lerado, *Public Schools and the Convention, No. 2*, Tacoma Daily Ledger, July 3, 1889, at 3; Bibb at 74, 114, 144-45.

Well aware of the funding problems that plagued the territorial schools and the public schools in many other states, the delegates created a permanent fund to exclusively support common schools. Const. art. IX, §

[2] Article XIII, Section 1 was amended in 1988 to specify that these specialized state institutions serve "youth who are blind or deaf or otherwise disabled" and "persons who are mentally ill or developmentally disabled[.]"

2.[3] The delegates were "careful to emphasize the importance, as well as the distinct character, of the common school." *Sch. Dist. No. 20, Spokane Cty. v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909) ("*Bryan*"). They rejected a motion that would have permitted use of common school funds to support any "public schools," and instead restricted those moneys to support exclusively "common schools." Quentin Shipley Smith, *Analytical Index to The Journal of the Washington State Constitutional Convention 1889*, at 686 (Beverly Paulik Rosenow ed., 1999).

C. The Legislature Establishes a Public School System, But Fails to Provide Adequate Funding.

During its first session in 1889, the Legislature established uniform common schools as part of the State's public school system. A common school was "defined to be a school that is maintained at the public expense in each school district, and under the supervision of boards of directors." Laws of 1889, ch. 12 § 44. The board of directors was elected by the local electorate, received and disbursed state common school funds, and controlled the day-to-day operations of the common schools. *See id*., ch. 12 §§ 25-26. The Legislature adopted uniform laws related to course instruction and discipline, among other things. *See id*., ch. 12 §§ 45-49.

[3] Article IX was amended in 1966 to create a separate permanent construction fund for the exclusive use of common schools.

About eight years later, the Legislature supplemented the common schools with "Higher and Special Institutions," specifically, normal schools, an agricultural college, and the School for Defective Youth. *See* Laws of 1897, ch. 3 §§ 212, 222, ch. 4 §§ 190, 228-29. These schools offered specialized courses designed to serve students with particular needs. *See id*. Six high schools (out of about 1,000 schoolhouses) offered an advanced education also existed around that time. Bibb at 105.

In 1978, this Court concluded that the State was failing to meet its paramount constitutional duty to make ample provision for public education. *Seattle Sch. Dist.*, 90 Wn.2d at 536-37. The Court articulated broad guidelines for a constitutionally adequate education: the word "education" in Article IX, Section 1 means the basic knowledge and skills necessary to compete in today's economy and meaningfully participate in the State's democracy. *See id*. at 517-18. The Court explained that it was the Legislature's duty to provide "substantive content" to meaning of the term "education" and the "program it deems necessary to provide that 'education'" (generally referred to as the "basic education program"). *Id*. at 518-19. The Court ordered the Legislature to define these terms and to fund fully the basic education program. *Id*. at 537-38.

During the next three decades, the Legislature adopted significant education reforms to meet the guarantee of Article IX. *See, e.g.*, ch.

28A.150 RCW. In *McCleary v. State*, the Court endorsed these reforms as meeting the "education" and "basic education program" requirements of Article IX. 173 Wn.2d 477, 523-24, 269 P.3d 227 (2012). First, "education" means the four goals of learning, as set forth in RCW 28A.150.210, and the Essential Academic Learning Requirements ("EALRs"), which define what children should know and be able to do at each grade level. *Id.* at 523. Second, the "basic education program" includes the offerings outlined in the Basic Education Act of 1977, *see* Laws of 1977, 1st Ex. Sess., ch. 359 and Laws of 2009, ch. 548 (together, "Basic Education Act"), such as the minimum instructional requirements identified in RCW 28A.150.220. *McCleary*, 173 Wn.2d at 526. The Court found, however, the Legislature had failed to provide the school districts with adequate financial support and directed the Legislature to adopt a plan and provide full funding by 2018. *Id.* at 537. Although the recently enacted biennial operating budget, Laws of 2017, 3rd Spec. Sess., Operating Budget (SSB 5883) ("2017-19 Budget"), purports to provide full funding, the *McCleary* plaintiffs contend it falls short of the State's paramount duty.[4] *See* Sect. III.F, *infra* (asking the Court to take judicial notice of the 2017-19 Budget).

[4] Greg Copeland, *McCleary plaintiffs say state budget for education falls short*, King 5, July 7, 2017, *at* http://www.king5.com/news/local/mccleary-family-attorney-says-

D. The State Funds Common Schools from the General Fund.

Currently, the Legislature funds the common schools by allocating basic education dollars primarily from the State's General Fund, in which revenues from various sources are deposited (e.g., state common school property tax, state sales and use taxes, business and occupation taxes, among others). *See* RCW 28A.150.380(1); CP 327 ¶ 6, 350-51 ¶ 8. The basic education allocation includes general apportionment, categorical funding for mandatory components of the basic education program (e.g., special education, bilingual instruction), and transportation funding. *See id.* The Legislature sets allocation formulas that are largely tied to student enrollment; as a result, student enrollment projections are a significant driver of the total amount of basic education funds. *See id*.

E. This Court Holds Private Charter Schools Under I-1240 Violate the Constitution.

I-1240 established charter schools as part of the common school system but operated by private organizations and funded from the General Fund on the same basis as common schools. *See LWV*, 184 Wn.2d at 408-09. The Court declared I-1240 unconstitutional. The Court first held that charter schools "are run by an appointed board or nonprofit organization and thus are not subject to local voter control," and as a result, "they

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lawmakers-package-falls-way-short-of-fully-funding-education/455139423 (last visited on July 10, 2017).

cannot qualify as 'common schools' within the meaning of article IX." *Id*. at 405. The Court further held that I-1240 diverted funds that were restricted to the support of common schools to charter schools in violation of Article IX of the Constitution. *Id*. at 406. The Court specifically noted that restricted funds were comingled in the General Fund and held: "Given this absence of segregation and accountability, we find unconvincing the State's view that charter schools may be constitutionally funded through the general fund." *Id*. at 409. The Court determined that I-1240 "designate[d] and relie[d] on common school funds as its funding source" and that "[w]ithout those funds, [I-1240 cannot] function as intended." *Id*. at 411. Accordingly, the Court held that I-1240 was unconstitutional in its entirety. *Id*. at 413.

F. The Legislature Attempts to Resurrect I-1240 in the Charter School Act.

In March 2016, the Legislature passed the Charter School Act. Governor Jay Inslee let the Act pass into law without his signature, explaining that the bill "would ultimately allow unelected boards to make decisions about how to spend public money…. I can think of no other situation where the Legislature or the people would condone that, especially when we are fighting to meet the needs of the almost one million children in our public schools." CP 391.

Containing only small tweaks to I-1240, the Act is another unconstitutional attempt to supplant the common school system. *See* App'x A (identifying differences between I-1240 and the Act). The Act provides for the establishment of 40 charter schools run by private organizations over the next five years. *See* RCW 28A.710.150(1), 28A.710.160(5); CP 338. Although the Act deleted the characterization of charter schools as "common schools," charter schools under the Act remain functionally the same as under I-1240. Instead of being characterized as "common schools," the Act describes charters "as an alternative to traditional common schools[.]" RCW 28A.710.020(b).

New charter schools can be approved by the same methods as under I-1240. First, the Washington Charter School Commission ("Charter Commission" or "Commission"), which is an "independent state agency," RCW 28A.710.070(1), has the power to establish charter schools anywhere in the state, RCW 28A.710.080(1). The Commission is comprised of nine appointed members, all of whom must demonstrate a "commitment to charter schooling as a strategy for strengthening public education," plus the Superintendent and Chair of the Board of Education ("BOE"). RCW 28A.710.070(3)(a), .070(4). The Commission is not subject to Superintendent oversight. RCW 28A.710.070(1). Second, school districts may apply to the BOE for permission to authorize charter

schools within their jurisdiction. RCW 28A.710.080(2). The Commission and school districts ("charter authorizers") solicit charter applications from private organizations, approve or deny applications, and negotiate and execute charter contracts for five-year terms. RCW 28A.710.100(1).

Like I-1240, charter authorizers have limited authority to monitor charter schools' performance and legal compliance. RCW 28A.710.180. Oversight cannot "unduly inhibit the autonomy granted to charter schools" and must be consistent with the principles and standards developed by yet another private organization, the National Association of Charter School Authorizers. RCW 28A.710.180(2), 28A.710.100(3). Authorizers are only allowed to revoke or decline to renew charter contracts under certain circumstances and a lengthy administrative process. RCW 28A.710.200.

As in I-1240, charter schools are operated by a "charter school board," RCW 28A.710.020(3), which is a "board of directors appointed or selected under the terms of a charter application to manage and operate the charter school," RCW 28A.710.010(6). The board is responsible for functions typically handled by the elected school board, including hiring, managing, and firing employees; receiving and disbursing funds; entering contracts; and determining enrollment numbers. RCW 28A.710.030(1). Also like I-1240, the Act exempts charter schools from all but a small subset of state laws applicable to common schools, including components

of the basic education program provided by common schools, as well uniform laws governing curriculum, discipline, and academic accountability. *See* Sect. IV.A.2.b, *infra*.

The Act specifies that the Legislature allocates public funds for charter schools from the Opportunity Pathways Account ("OPA"), which holds certain state lottery revenues. RCW 28A.710.270, 28B.76.526, 67.70.240; CP 350 ¶ 7. OPA funds are disbursed to charter schools to pay for operations on the same basis as common schools, using the same statutory formulas based on enrollment. RCW 28A.710.220, .230(1) . Public funds also pay for state agencies' administrative costs, including mandatory audits and charter school enrollment forecasts. *See, e.g.*, 2017-19 Budget, §§ 501(2)(b), (8), 124(3), 127, 520.

The Act does not, however, raise new revenue or lower funding for other state programs. CP 328 ¶ 11, 351-52 ¶ 12. As confirmed by the Act's legislative history, *see* Sect. IV.B.2, *infra*, the Legislature intends to rely—and already has relied—on the General Fund and other restricted funds to pay for the exponentially growing expense of up to 40 charter schools over the five-year period provided for under the Act. Last fiscal year, the Legislature spent about $12 million for eight charter schools. 2017-19 Budget, §§ 1501(3), (8), 1515, 1516; CP 973 ¶ 3, 1097-98 ¶ 5. For this coming fiscal year, the Legislature appropriated more than $32

million from the OPA to pay for eight existing and two new charter schools—a 267% increase in funding.[5] 2017-19 Budget, §§ 501(3)(b), (8), 519, 520; CP 1098 ¶ 6. Significantly, charter schools' share of OPA revenue grew from 9% to 24%. App'x B. To make up for that hit, the Legislature diverted monies from the General Fund and the Education Legacy Trust Account ("ELTA") to cover the costs of other programs eligible for OPA funds. *See* App'x D. Like the General Fund, the ELTA is used in part to pay for common schools and, thus, contains protected comingled funds. *See* 2017-19 Budget, § 502 ($346 million from ELTA to common schools); *LWV*, 184 Wn.2d at 409.

The Legislature's sleight of hand avoids the appearance of using common school funds for charter schools. Absent charter funding, however, common school funds would not have to be diverted to pay for the other OPA programs. Worse, going forward, the State does not dispute that the hundreds of millions of dollars needed to pay for up to 30 additional charter schools and expanded grade coverage at the 10 existing charter schools will inevitably exceed the capacity of the OPA, which is projected to remain around $127 million per year through FY 2020-21. CP 329 ¶ 13, 352-53 ¶¶ 13-14; *see also* CP 768, 3034 (2016 forecasts);

[5] The 2016 Supplemental Budget appropriated funds to charter schools from the OPA only for one year (FY 2016-17). To allow meaningful comparison, biennial appropriations are divided equally between each year, unless set forth in the budget.

Wash. State Caseload Forecast Council, *Charter School Enrollment* (June 2017); Wash. State Econ. & Rev. Forecast Council, *Economic and Revenue Forecast* 57-58, 73 (June 2017).[6]

Appellants request that the Court take judicial notice of the 2017-19 Budget and the State's latest official revenue and enrollment forecasts. *See State ex rel. Helm v. Kramer*, 82 Wn.2d 307, 319, 510 P.2d 1110 (1973) (taking judicial notice of Governor's budget message and agency reports). These new developments confirm that, in practical effect, the Legislature is diverting restricted funds to charter schools.

G. The Trial Court Erroneously Upholds the Act as Valid.

Appellants filed this lawsuit seeking to declare the Charter School Act unconstitutional and to prevent further implementation of the Act. Several supporters of the Act (collectively, "Intervenors") intervened.

Initially, the State moved to dismiss Appellants' claim that the Act interferes with the State's duty to fund fully public education pursuant to *McCleary* in violation of Article IX, Section 1 (the "ample provision" claim). CP 67-82. The trial court granted the State's motion, holding the ample funding claim "lacks ripeness because it speculates that the [Act] inhibits the State from meeting its 2018 public school funding obligations

[6] Available at http://www.cfc.wa.gov/Handouts/Charter_Schools_Enrollment.pdf and http://www.erfc.wa.gov/publications/documents/jun17pub.pdf (last visited on July 7, 2017).

under [*McCleary*], and theorizes that the State cannot properly fund both charter schools and traditional public schools." CP 196.

Further, although there is no dispute the three individual plaintiffs have standing to bring this lawsuit, Intervenors twice moved to dismiss the organizational plaintiffs. CP 48-66, 525-37. The trial court erroneously held that the organizational plaintiffs cannot assert representational standing based on their members' taxpayer status, but ultimately held that they have standing on other grounds. CP 196-203, 3727-28.

After considering cross motions for summary judgment, the trial court upheld the Act as facially valid. CP 3744-69. The trial court held that the Act's accounting trick and undisputed need to rely on the General Fund to pay for charter schools did not form the basis of a ripe claim for a violation of article IX, section 2's prohibition on the diversion of common school funds. CP 3762-64. The trial court also held that the Act does not violate article IX, section 2's general and uniform requirement. CP 3751-62. Further, while acknowledging the Act creates "an eleven-member independent state agency that is charged with authorizing and overseeing charter schools," the trial court held that the Act does not displace the Superintendent's supervisory powers. CP 3765-66. The trial court also held that the Act does not improperly delegate to private organizations the

State's paramount duty to provide a basic education, CP 3764, and does not improperly amend existing law, CP 3767-68.

Appellants appealed and requested direct review by this Court.

IV. ARGUMENT

A. The Act Creates a Parallel System of Publicly Funded, Privately Operated General Education Schools in Violation of Article IX, Section 2.

Article IX, Section 2 provides for one uniform public school system with common schools providing a general education to all children, supplemented with optional specialized schools. Contrary to this design, the Act creates a parallel system of privately operated non-uniform public schools designed to supplant, not supplement, the general education provided by the common schools. The Act is therefore unconstitutional.

1. The Constitution Requires that Common Schools Provide the General Basic Education to All Children.

Article IX, Section 2 states:

> The Legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established.

Section 2 mandates a single public school system. *Northshore Sch. Dist. No. 417 v. Kinnear*, 84 Wn.2d 685, 728, 530 P.2d 178 (1974), *overruled on other grounds by Seattle Sch. Dist.*, 90 Wn.2d at 514. Section 2's reference to "a" system followed by "the" system confirms the drafters'

intent to require one unitary system, not multiple competing systems. *See State, Dep't of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 965, 275 P.3d 367 (2012) ("'[T]he'…is used before nouns of which there is only one or which are considered as one." (quotations omitted)).

The primacy of "common schools" in the State's unitary public school system is undisputed. *See Bryan*, 51 Wash. at 502 ("In [Article IX, the drafters] were careful to emphasize the importance, as well as the distinct character, of the common school."). Within the meaning of the Constitution, a "common school" is "one that is common to all children of proper age and capacity, free, and subject to, and under the control of, the qualified voters[.]" *Bryan*, 51 Wash. at 504. Before the Act, common schools were the only schools to provide a general education to the State's children. The drafters deliberately restricted the use of certain funds to the common schools, rejecting an amendment that allowed the Legislature to use restricted funds for public schools. *See* Sect. III.B, *supra*. These common school provisions ensure not only universal access to common schools, as noted by the trial court, CP 3754, but also uniformity in the general education program provided across the state. *See* Lerado at 3.

The drafters also allowed for supplementation of the common schools through three optional classes of schools (high schools, normal schools, and technical schools), as deemed appropriate by the Legislature.

Const., art. IX, § 2. These optional schools were understood to offer specialized programs for a subset of students. For example, as this Court has noted, "normal schools" were intended "for the training of teachers for all the common schools." *Bryan*, 51 Wash. at 504. Similarly, during the territorial period, "high schools" offered an advanced education that was then not considered necessary for the majority of the State's citizens. *See* Troth at 159; Bibb at 125. Although the State has never had "technical schools," the drafters may have been referring to schools like the state agriculture college. *See* Op. Wash. Att'y Gen. 1998, No. 6, at 5. The term "technical schools" itself indicates these schools provide a specialized technical education distinct from common schools. *See id*. The framers also provided for state educational, reformatory, and penal institutions for students with special needs. Const. art. XIII, § 1 (1889). Thus, the Constitution establishes a system of mandatory common schools for general public education and schools providing specialized education to supplement the common schools.

The Act, however, establishes an alternative system of non-common schools that replaces a common school education. *See* RCW 28A.710.020(1)(b) (defining "charter school" as an "alternative to traditional common schools" operated "separately from the common school system"). Like common schools, charter schools are open to all

children and serve the same general student population in kindergarten to twelfth grade. RCW 28A.710.050(1), 28A.150.020(2). Charter schools are required to meet the same educational goals as common schools, albeit through privately designed non-uniform programs. *See* RCW 28A.710.040(2)(b), 28A.150.210. Charter schools also are funded on the same basis as common schools. RCW 28A.710.280(1). Yet, charter schools are not common schools. RCW 28A.710.020(1)(b). The Constitution does not allow the Legislature to provide basic education to the State's children through a separate privatized system not subject to local voter control, a key feature of common schools, *Bryan*, 51 Wash. at 504.

The trial court improperly relied on the Legislature's "evolving definition of 'public school'" to sidestep the uniformity requirement. CP 3753. This Court rejected a similar argument in *LWV*, reaffirming that the Legislature cannot by legislative fiat qualify or enlarge Article IX's constitutional constraints. 184 Wn.2d at 404 (refusing to recognize an "evolving common school system" (citing *Bryan*, 51 Wash. at 503)) (internal quotations omitted). Further, although Article IX, Section 2 does not explicitly "state that the public school system includes only the listed schools," CP 3752, it establishes the framework for a single public school system consisting of common schools and optional specialized schools.

See Bryan, 51 Wash. at 502. The optional schools specified by the drafters provided specialized educational opportunities to students with unique needs to supplement common schools, consistent with the drafters' intent to protect common schools while meeting the needs of all children. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist., No. 1*, 149 Wn.2d 660, 672, 72 P.3d 151 (2003) ("*Parents Involved*"); *see also Bryan*, 51 Wash. at 502 (Section 2's terms "must be considered in connection with the general scheme of education outlined in the Constitution"). Unlike charter schools, the optional specialized schools do not purport to serve the general student population as an alternative to common schools. And the State does not argue that charter schools constitute "high schools, normal schools, [or] technical schools" as those terms are used in the Constitution. The listing of specialized schools is not an open license for the Legislature to supplant common schools.

Charter schools cannot be equated with existing supplemental and specialized programs, as suggested by the trial court. CP 3752-53. Charter schools are not comparable to these other programs. For example, the stand-alone schools identified by the trial court provide specialized educational programs to discrete student populations, including education programs for incarcerated juveniles, ch. 28A.193 RCW; accelerated learners, Running Start, RCW 28A.600.300-.400; and technical high

school diploma programs, RCW 28B.50.535. Unlike charter schools, these programs fill the unique needs of a subset of students, and are not intended as an "alternative" to common schools. This Court has acknowledged the flexibility of schools that serve student populations who have "different educational needs and may require different training programs more appropriate to their circumstances." *Tunstall ex rel. Tunstall v. Bergeson*, 141 Wn.2d 201, 220, 227, 5 P.3d 691 (2000) (upholding non-uniform program for children in adult prison given "the circumstances in which [incarcerated youth] are found").

Within constitutional constraints, Appellants do not dispute that innovation and private enterprise can participate in Washington's public education system. *See Seattle Sch. Dist.*, 90 Wn.2d at 504. For example, the Legislature potentially could empower school districts to partner with private organizations to establish schools offering innovative programs; provided, however, the schools remain subject to the school district's control and the Superintendent's supervision. Uniform school laws would apply to such schools (i.e., no blanket waiver), but the Superintendent would have discretion to waive specific requirements to allow for innovation by the school district. *See, e.g.*, RCW 28A.655.180 (authorizing superintendent to grant waivers to implement an innovation school). Raisbeck Aviation High School in Highline School District is an

example of such an innovative school run by the school district in partnership with Boeing. CP 3098. Here, however, the Legislature relies on state funds to pay for general education schools without the governance and program restrictions applicable to common schools.

Put another way, could the Legislature fund only charter schools and no common schools? A fifty-fifty split? The answer is no and the same answer applies to the Act, which begins by funding up to 40 charter schools.

2. Charter Schools Are Not a Uniform Replacement for Common Schools.

Even if Article IX, Section 2 permits general education schools that are not common schools (which it does not), the uniformity requirement does not permit the stark differences between charter schools and common schools. Section 2 requires a single public school system with unity of governance and educational offerings. *See Northshore Sch. Dist. No. 417,* 84 Wn.2d at 728; *see also Fed. Way Sch. Dist. No. 210 v. State*, 167 Wn.2d 514, 524, 219 P.3d 941 (2009) ("access by each student of whatever grade to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education"); *Bryan*, 51 Wash. at 504 ("every child shall have the same advantages and be subject to the same discipline").

This Court has held Title 28A RCW's Common School Provisions, which includes the Basic Education Act, meet the "general and uniform" requirements for common schools. *Fed. Way Sch. Dist.*, 167 Wn.2d at 525. The Common School Provisions establish structural uniformity, through an integrated system under Superintendent and local school district control, and uniformity in the basic education program provided to all children. *See* RCW 28A.150.070, .020. But charter schools do not have to conform to the Common School Provisions.

The Act establishes a parallel system of privately operated schools providing a different educational program to compete with the mandated common schools. Allowing this second non-uniform system guts the uniform requirement and defeats the drafter's intent to ensure all children receive a uniform basic education regardless of geographic happenstance.

a.) Non-uniform governance

Charter schools (unlike common schools) are controlled by private organizations, rather than the taxpayers who pay for public education. RCW 28A.710.030. The private charter board—wholly unaccountable to voters—is charged with hiring, managing, and firing charter school employees, receives and disburses state funds, and maintains charter school facilities. RCW 28A.710.030(1). Charter schools authorized by the appointed Charter Commission have no oversight by an elected

official, including the Superintendent. *See* Sect. IV.E, *infra*. And the limited oversight by local school district authorizers is not an adequate substitute for voter control of day-to-day management, including decisions about the expenditure of public funds. *See LWV*, 184 Wn.2d at 399; *see also* RCW 28A.710.030(1), RCW 28A.710.180(2) (oversight cannot "unduly inhibit the autonomy granted to charter schools").

b.) Non-uniform education program

Charter schools are not subject to the vast majority of the uniform common school laws that ensure all children receive a uniform general education. *See* Title 28A RCW; RCW 28A.710.040(3). The Act waives all state laws and rules that are not specifically identified in RCW 28A.710.040(2) or the contract.

Charter schools are not required to offer uniform instruction and services for English language learners, highly capable students, and underachieving students. *See* RCW 28A.150.220(2). Instead, the private organizations that operate charter schools are authorized to design and implement experimental general education programs as an alternative to common schools. The Act only requires that charter schools "provide a program of basic education, that meets the goals in RCW 28A.150.210, including instruction in the essential academic learning requirements, and participate in the statewide student assessment system as developed under

RCW 28A.655.070[.]" RCW 28A.710.040(2)(b) (emphasis added). This Court has made clear that Article IX requires more than just shared goals—the specific program of basic education must also be the same. *See McCleary*, 173 Wn.2d at 521; *see also Wagner v. Royal*, 36 Wash. 428, 433-34, 78 P. 1094 (1904) (a common school's adoption and enforcement of a different course of study would violate uniformity required by Constitution).

The trial court erroneously determined that charter schools and common schools offer the same basic education program, invoking *in pari materia* to import the Basic Education Act's definition of "the program of basic education" applicable to common schools into the Charter School Act. CP 3757. But the Basic Education Act's definition is limited by its own terms to a separate chapter, ch. 28A.150. *See* RCW 28A.150.200(2) ("The legislature defines the program of basic education under this chapter…" (emphasis added)), 28A.150.203 ("The definitions in this section apply throughout this chapter…" (emphasis added)). Moreover, this method of statutory interpretation does not apply where (as here) the statute's plain and ordinary meaning is unambiguous. *Henry v. Lind*, 76 Wn.2d 199, 201, 455 P.2d 927 (1969). The Act separately defines a charter school's "program of basic education" as a program "that meets the basic education goals in RCW 28A.150.210, including instruction in

the essential academic learning requirements" ("EALRs"). RCW 28A.710.040(2)(b). To hold otherwise would improperly render the Act's language requiring instruction in the EALRs superfluous because the same requirement is included in RCW 28A.150.220(3)(a).

Further, charter school students are not subject to the same discipline as common school students. Although the current contracts require compliance with certain procedural laws and prohibit corporal punishment, CP 3759 n.9, charter schools are not required to comply with uniform laws for imposition of disciplinary action, including suspension, expulsion, and exclusion from the classroom, RCW 28A.600.410-.490. Under the Court's precedent, Section 2 requires uniformity in how children are disciplined. *See Fed. Way Sch. Dist.*, 167 Wn.2d at 524.

Additionally, the Act interferes with the ability of students to transfer between public common schools and charter schools, as required by Article IX, Section 2. *See Fed. Way Sch. Dist.*, 167 Wn.2d at 524. As the trial court acknowledged, the Act provides no guarantee that credit will be awarded to public school students transferring into a charter school. CP 3760 (citing RCW 28A.710.060(2)). It is not enough, as the trial court suggested, that charter schools might accept some transfer credits. The critical problem is that the deliberate differences in charter schools' curriculum and course offerings raises barriers to transfer.

Article IX, Section 2's uniform system requirement constrains the Legislature's discretion. The Act violates these constraints by establishing a parallel system of schools that fundamentally differ from the common schools they are designed to supplant.

B. The Act Diverts Restricted Common School Funds in Violation of Article IX, Sections 2 and 3.

The Constitution requires the Legislature to establish "common schools" and fully fund them with dedicated funds to be used solely for their support. Const. art. IX, § 2. This Court struck down I-1240 because it diverted state funds away from common schools to support charter schools. The Act does not remedy the constitutional defects identified by the Court, but instead relies on an accounting trick to make it look like the Act has fixed the problem. The Act ultimately relies on money from the State's General Fund, which the Court has recognized contains restricted common school funding. The Act is thus unconstitutional.

1. The Legislature Cannot Rely on the General Fund to Pay for Charters Under the Current School Funding Scheme.

Article IX contemplates that the Legislature will set aside sufficient state funds in a dedicated account to fund fully common schools. *See* Const. art. IX, §§ 1-3; *LWV*, 184 Wn.2d at 409-10. While the common school property tax may once have sufficed for that purpose, common school funding requirements have long exceeded that dedicated

tax revenue. Since 1967, the Legislature has deposited that dedicated tax revenue into the General Fund, commingled it with other state revenue, and relied principally on the General Fund (as well as, in recent years, the ELTF) to support the common schools. *See* Laws of 1967, ch. 133 § 2.

Because of this practice, in *LWV*, this Court held that the Legislature cannot use the General Fund to pay for charter schools. *See LWV*, 184 Wn.2d at 409. As the Court explained, a statute violates the exclusivity requirement where "its intended operation would 'necessitate[] the use of common school funds for other than common school purposes[.]'" *Id*. at 408 (quoting *Mitchell v. Consol. Sch. Dist. No. 201*, 17 Wn.2d 61, 66, 135 P.2d 79 (1943)). The Court held that because "the State does not segregate constitutionally restricted moneys from other state funds[,] … it [cannot] demonstrate that these restricted moneys are protected from being spent on charter schools." *Id*. at 409. Thus, the Court rejected the argument that "charter schools could be funded out of the state general fund." *Id*. at 410.

As a result, a law's constitutionality does not depend on whether it "make[s] any appropriation" of protected common school funds. *Id.* at 408 (citing *Mitchell*, 17 Wn.2d at 66). Instead, the constitutional question is whether the law's intended operation will have the effective of utilizing

common schools funds. *Id.* As in I-1240, the Act's funding mechanism violates the constitutional restrictions for common school funds.

2. The Legislature Uses the General Fund, Albeit Indirectly, to Pay for Charter Schools.

The Legislature had several options for funding charter schools consistent with *LWV*. The Legislature could have created and fully funded a segregated restricted account to pay for common schools. *See* CP 3029 at 61:2-5, 3025 at 26:14-27:2. The Legislature also could have raised new revenue or cut existing programs not funded by the General Fund. CP 328 ¶ 10, 3028 at 52:8-14. But the Legislature chose not to do so. CP 351-52 ¶ 12, 328 ¶ 11; *see also* CP 413-15 (withdrawn amendment to levy a new tax). Instead, the Legislature added charter schools to the list of programs funded by the OPA, recognized that General Fund revenue would be necessary to pay for the non-charter programs supported by the OPA, and called it a day. *See* RCW 28A.710.270; CP 351-53 ¶¶ 12-13, 328 ¶¶ 9-11.

Specifically, in enacting the Act, the Legislature was aware that the OPA will not have sufficient funds to cover the hundreds of millions of dollars per year necessary to pay for up to 30 new charter schools, as well as substantial growth in student populations in the ten charter schools

operating this school year.[7] *See* RCW 28A.710.150(1); CP 329 ¶ 13, 330 ¶ 16, 353 ¶ 14. In fact, the State's forecasts show the OPA's revenues decreasing from $139 million in FY 2015-16 to $127 million per year through FY 2020-21. CP 768. There is no conceivable way charter schools' rising costs over the five years authorized under the Act can be funded through the stagnant OPA. CP 329 ¶ 13, 353 ¶ 14.

The only evidence of how the Legislature will pay for escalating charter school costs shows money coming out of the General Fund to supplement the OPA. *See* CP 345 (Fiscal Impact Report, attached as App'x C), 329-331 ¶¶ 14-16. Senate staff, describing how money and/or programs would flow between the General Fund and the OPA, explained that charter schools will be funded through "just a switch of funds. Moving them from one fund to another." CP 329-30 ¶ 15.[8] Senate staff acknowledged "unobligated" funds in the OPA could be used in FY 2017, but testified there was "an expectation" the Legislature would necessarily resort to the General Fund down the road. CP 309, 389 ¶ 9. This explanation of how the funding shortfall would be addressed is consistent

[7] For example, seven Commission-authorized charter schools budgeted for their state funding to triple by their fifth year. CP 394-411, 2611-2860. And the State projects that charter school enrollment will more than double by 2018-19. CP 3034-35.

[8] At a public hearing, then-Representative Chris Reykdal described the Act's funding mechanism as "laundering lottery money and then backfilling that with general funds, instead of going straight from general fund to [charter] schools." CP 308, 387 ¶ 10.

with the Legislature's undisputed practice of treating the General Fund and OPA as a single pot of money. CP 349 ¶ 5, 351-53 ¶ 12.

The Act's indirect diversion of restricted funds is apparent in the recent budget. Funding for charter schools increased by 267%—from $12 million for eight charter schools in FY 2016-17 to $32 million for 10 charter schools in FY 2017-18. *See* Sect. III.F, *supra*. Charter school operations now account for 24% of OPA revenue. App'x B. As a result, the Legislature dipped into the restricted General Fund (as well as the ELTA, which contains restricted common school funds, *see* Sect. III.F, *supra*) to pay for the other programs that previously received OPA funds. *See* App'x D. The new budget also requires use of restricted General Fund dollars to prepare official projections of charter school enrollment three times each year. 2017-19 Budget, § 127; RCW 43.88C.020(2).

Simply swapping funds and/or other programs between accounts does not resolve the constitutional infirmity identified in *LWV*. Constitutional protection for common school moneys "is not dependent on the source of the revenue (i.e., the type of tax or other funding source) or the account in which the funds are held (i.e., the general fund or other state fund)." *LWV*, 184 Wn.2d at 407 (citing *Yelle v. Bishop*, 55 Wn.2d 286, 316, 347 P.2d 1081 (1959)). The Constitution prohibits the use of restricted common school funds, whether accomplished directly or by

"'subterfuge[.]'" *Id.* at 405 (quoting *Bryan*, 51 Wash. at 503); *see also Bryan*, 51 Wash. at 505) (invalidating law that "by indirect methods" took funds from common schools to support experimental schools).

The trial court failed to address the inevitable deficiency of the OPA to pay for charter schools and other programs without resorting to the General Fund. Instead, the trial court erroneously dismissed Appellants' diversion claim as not ripe. CP 3762-63. But, consistent with the evidence produced below, the newly enacted budget diverts money from the General Fund to maintain funding for non-charter OPA programs while increased OPA funds are used to pay for charter schools. *See* App'x D. Further, the six-justice majority in *LWV* rejected a similar wait-and-see approach to how the Legislature might fund an educational experiment. *See LWV*, 184 Wn.2d at 423-24 (Fairhurst, J., concurring in part, dissenting in part) (arguing I-1240 was not susceptible to facial challenge because the Legislature might fund charter schools in a constitutional manner in future budgets); *see also Mitchell*, 17 Wn.2d at 66 (invalidating statue based on the expected impact of its implementation on restricted common school funds). Waiting puts even more children at risk of having their schools closed because the Legislature enacted the Act without a constitutionally viable funding source during the minimum five-year period of the Act, RCW 28A.710.020(3). No child deserves that outcome.

Unless and until the Legislature funds fully basic education through a dedicated funding source that is placed into a restricted account, the Legislature must either raise new revenues or cut other existing programs to fund charter schools. The Legislature failed to do so here. Thus, the Act is unconstitutional.

C. The Act Impedes the State's Paramount Duty to Provide Amply for Basic Education Under Article IX, Section 1.

The Act hinders the State's ability to provide constitutionally adequate funding for basic education. In *McCleary*, the Court found that state funding has "consistently fallen short of the actual cost" of implementation. 173 Wn.2d at 537; *see also* Order, *McCleary v. State*, No. 85362-7, at 10 (Wash. Oct. 6, 2016) ("the State continues to provide a promise—'we'll get there next year'—rather than a concrete plan for how it will meet its paramount duty"). The 2017-19 Budget may or may not solve the underfunding problem, but until the State meets its full funding obligations, diverting money to charter schools is not consistent with this Court's contempt findings. Thus, contrary to the trial court's dismissal of the ample funding claim as not ripe, CP 204-05, the Legislature's failure to meet its paramount duty is current and ongoing.

D. The Act Unconstitutionally Delegates the State's Paramount Duty Under Article IX, Section 1.

The Act unconstitutionally delegates the State's paramount duty to define a basic education program to private charter organizations. *Cf. Parents Involved*, 149 Wn.2d at 673 (State's paramount duty cannot be discharged through delegation, even to school districts). Even if the State's paramount duty could be delegated (which it cannot), the Act fails to provide sufficient standards and procedural safeguards to ensure the duty will be satisfied.

1. The Act Unconstitutionally Delegates the State's Paramount Duty to Private Organizations.

This Court repeatedly has held that the State may not delegate its constitutional paramount duty to define a basic education program. In *Seattle School District*, the Court held that the paramount duty "is imposed upon the 'State' rather than upon any one of the three coordinate branches of government[,]" and that "the State may discharge its 'duty' only by performance unless that performance is prevented by" the children of the state. 90 Wn.2d at 512-13. The Court further recognized that although the paramount duty is imposed on the State, the Legislature must determine "the organization, administration, and operational details of the 'general and uniform system' required by" the Constitution. *Id*. at 518. The Court then determined the Legislature had failed to fully implement the State's

duty because it had failed to define or give "substantive content to 'basic education' or a basic program of education." *Id*. at 519. Nearly 25 years later, in *Parents Involved*, the Court reaffirmed that the State may not delegate this duty. *See* 149 Wn.2d at 673.

In violation of this precedent and the Constitution, the Act improperly delegates the State's paramount duty to define a basic education program to private charter organizations. *See, e.g.*, RCW 28A.710.040(3), .130(1)(n) (charters define their own educational program). As discussed above, the Act exempts charter schools from the requirements of the legislatively adopted basic education program. *See* Sect. IV.A.2.b, *supra*. Instead, private charter organizations design the basic education program at each charter school.

The Act's delegation of the duty to define a basic education program is especially problematic because the delegation is made to private organizations. *See United Chiropractors of Wash., Inc. v. State*, 90 Wn.2d 1, 5, 578 P.2d 38 (1978) ("Delegation to a private organization raises concerns not present in the ordinary delegation of authority to a governmental administrative agency."). Unlike government agencies, private organizations are not subject to public oversight. The impropriety is even more problematic here because the Act implicates the State's most important duty. *See In re Powell*, 92 Wn.2d 882, 892, 602 P.2d 711

(1979) ("[I]t is imperative to consider the magnitude of the interests which are affected by the legislative grant of authority.").

The Constitution's assignment of legislative responsibility to define the components of a basic education program under Article IX cannot be modified through legislation such as the Act. *See McCleary*, 173 Wn.2d at 516-17. The Act is therefore unconstitutional.

2. The Act Is Unconstitutional Because It Fails to Provide Sufficient Procedural Safeguards.

Even if the State's duty to define a basic education program could be delegated (which it cannot), the Act still violates the Constitution because it fails to provide sufficient procedural safeguards to control arbitrary action and abuse of discretionary power. To properly delegate, the Legislature must provide standards to indicate what is to be done and establish procedural safeguards to control arbitrary action and abuse of discretionary power. *United Chiropractors of Wash.*, 90 Wn.2d at 4; *see also Barry & Barry, Inc. v. State Dep't of Motor Vehicles*, 81 Wn.2d 155, 159, 500 P.2d 540 (1972) (even delegation to state agency requires standards and procedural safeguards).

Despite the requirement that the Legislature provide substantive content to the components of the "basic education program," the trial court incorrectly concluded that the Act "provides standards and guidelines for

authorizing and operating a charter school," citing one statutory section that specifies only the required elements of a charter school application. CP 3764 (citing RCW 28A.710.130). Application requirements are, however, distinct from a program of basic education program. The Act provides that charter schools may develop their own "program of basic education," which only must meet the "goals" identified in RCW 28A.150.210, "including instruction in the essential academic learning requirements[.]" RCW 28A.710.040(2)(b). By contrast, the Basic Education Act approved by the Court in *McCleary* defines a basic education program as including certain minimum components set out in RCW 28A.150.220, most of which charter schools are not required to provide. *See* RCW 28A.710.040(3) (charter schools are exempt from all state laws except as specifically provided in the Act).

The Commission's limited oversight does not provide sufficient procedural safeguards. In reality, once a charter school's education program is in place, authorizers have limited tools to compel charter schools to comply with the few standards that do exist. The Act does not allow authorizers to intervene in the day-to-day management of a charter school, to limit enrollment, to control resource allocation, to revoke the Act's general waiver of the laws applicable to common schools, or to withhold public funds. *See* RCW 28A.710.180(2) (Commission oversight

cannot "unduly inhibit the autonomy granted to charter schools"). The Act also limits the bases for revoking a charter contract and requires an extensive, time-consuming process prior to closure. RCW 28A.710.200.

Given the magnitude of the constitutional duty at stake, the Act's delegation of that duty without sufficient standards and safeguards is particularly troubling. *Cf. In re Powell*, 92 Wn.2d at 892 (1979) (imposing the "procedural safeguard" requirement with regard to the execution of *statutory* duties). The Act's delegation of the State's paramount duty to define a basic education program to private entities violates the Constitution and should be invalidated on that basis alone.

E. The Act Creates a Separate System of Charter Schools Outside the Superintendent's Supervision in Violation of Article III, Section 22.

Washington's Constitution provides that the Superintendent "shall have supervision over all matters pertaining to public schools[.]" Const. art. III, § 22 (emphasis added). The Superintendent's constitutional authority over public schools is codified by statute. *See, e.g.,* RCW 28A.315.175(2) (Superintendent authorized to "[c]arry out powers and duties of the superintendent of public instruction relating to the organization and reorganization of school districts."); *see also generally* ch. 28A.150 RCW (providing for reporting by districts to Superintendent); ch. 28A.300 RCW (providing for Superintendent oversight of school

districts). In violation of Article III, Section 22, the Act unconstitutionally usurps the Superintendent's supervisory authority over public education by placing all meaningful supervisory authority over charter schools with the Charter Commission. *See, e.g.*, RCW 28A.710.070(1), (2).

The Commission is an "independent state agency" of which nine of 11 members must be pro-charter. The Commission administers, manages, and supervises the charter schools it authorizes, RCW 28A.710.070(1), (2), .080(1), so long as it does not "unduly inhibit the autonomy granted to charter schools," RCW 28A.710.180(2). At the same time, the Act purports to place charter schools under the supervision of the Superintendent to the extent "not otherwise provided" by the Act. RCW 28A.710.040(5). Although the trial court correctly interpreted this clause to mean that "any displacement of the Superintendent's supervisory authority would have to be provided in the Act," it inexplicably concluded that "[n]owhere in the [Act] is the Superintendent made subordinate to the Commission." CP 3765-66. To the contrary, the Act expressly grants supervision over charter schools to the Commission, not the Superintendent. *See* RCW 28A.710.070(2), .040(5).

The fact that the Act confers certain limited powers and duties to the Superintendent does not remedy this constitutional violation. The Act merely allocates the Superintendent one vote on the eleven-member,

super-majority pro-charter Commission, *see* RCW 28A.710.070(3)(ii), and situates the Commission's offices within the Superintendent's offices for "administrative purposes only," RCW 28A.710.070(8). These remedial gestures fall short of conferring the Superintendent supervisory authority on all matters pertaining to charter schools. *See State v. Preston*, 84 Wash. 79, 86-87, 146 P. 175 (1915) ("[G]eneral supervision means something more than the power merely to confer with and advise, or to receive reports, or file papers; in other words, … the power of supervision is not granted to an officer as a mere formality."), *aff'd sub nom., State ex rel. Seattle Sch. Dist. No. 1 v. Preston*, 84 Wash. 79, 149 P. 352 (1915).

The "supervision" required by Article III, Section 22 is not merely the right to oversee teacher certification and student assessments as the trial court claims. *See* CP 3766. Rather, supervision over "all matters pertaining to public schools" necessarily includes the powers to authorize, manage, and correct the actions of the public schools, which are powers the Act delegates to the Commission, not the Superintendent. RCW 28A.710.070(1). And contrary to the trial court's conclusion that the Superintendent has supervisory authority by maintaining the "power of the purse," CP 3766, the Act does not afford the Superintendent any discretion to withhold or delay distributions of funds, RCW 28A.710.220(2) (Superintendent "shall distribute state funding") (emphasis added).

As this Court and the Attorney General have recognized, "supervision" includes, at a minimum, "'the power to review all the acts of the local officers, and to correct, or direct a correction of, any errors committed by them. Any less power than this would make the supervision an idle act—a mere overlooking without power of correction or suggestion.'" Op. Wash. Att'y Gen. 1975 No. 1 (quoting *Great Northern Ry. Co. v. Snohomish County*, 48 Wash. 478, 484-85, 93 P. 924 (1908) (citations omitted)); *see also* Op. Wash. Att'y Gen. 2009, No. 8 (no legislative authority to vest supervision over basic education program "in any other officer not under the Superintendent['s] supervision."). Thus, by creating a separate system of charter schools under the supervision of the independent Charter Commission, the Act strips the Superintendent of the constitutional supervisory authority over <u>all</u> matters pertaining to public schools, in violation of Article III, Section 22.

F. The Act Violates Article II, Section 37 by Amending State Collective Bargaining Laws and the Basic Education Act.

Article II, Section 37 requires that all proposed laws set forth in full amendments to existing law.[9] As this Court has explained, Article II, Section 37 was designed to avoid the "mischief" caused by new enactments that require examination and comparison to be understood.

[9] "No act shall ever be revised or amended by mere reference to its title, but the act revised or the section amended shall be set forth at full length." Const. Art. II, § 37.

Yelle, 55 Wn.2d at 299. Here, the Charter School Act violates Section 37 by failing to disclose significant amendments to state collective bargaining laws and the Basic Education Act. As a result, the Act's true impacts cannot be fully understood without carefully comparing the Act with existing law.

1. The Act Unconstitutionally Amends State Collective Bargaining Laws.

To restrict the power and influence of public employee unions at charter schools, the Act amends state collective bargaining laws to prohibit unionization at charter schools beyond the individual school level. Under state collective bargaining laws, ch. 41.56 and 41.59 RCW, public employees have the right to organize and designate representatives of their own choosing. *See* RCW 41.56.040, 41.59.060. Public school employees generally can organize district-wide based on different factors such as employee type (e.g., principals, supervisors, nonsupervisory employees) and employer type (e.g., vocational-technical institutes, programs for incarcerated juveniles). *See, e.g.*, RCW 41.59.080, 41.56.060, 41.56.025.

The Act purports to extend the coverage of the existing collective bargaining laws to charter school employees, but provides that bargaining units at charter schools are limited to employees working in each charter school and must be separate from other bargaining units in school districts.

RCW 41.56.0251, .59.031. The impact of the Act's restrictions on bargaining units cannot be fully understood without reference to existing state collective bargaining laws, particularly RCW 41.56.060 (determination of bargaining units) and RCW 41.59.080 (same), which afford public employees much greater bargaining rights.[10]

This Court encountered a similar problem in *Wash. Educ. Ass'n v. State*, 93 Wn.2d 37, 41, 604 P.2d 950 (1980), where the Court invalidated a new law establishing statewide limitations on public school salaries under Section 37. The law capped school district salary increases but failed to specify that, under prior law, "districts ha[d] the power to spend funds, from whatever source, as they choose on teacher salaries." *Id.* Similarly, here, the Act greatly restricts charter employees' rights to organize into bargaining units, without setting forth those rights under existing law as required by Article II, Section 37.

2. The Act Unconstitutionally Amends The Basic Education Act.

To give private organizations operating charter schools unfettered control over the education program offered, the Act amends the Basic Education Act by granting authorizers and the private charter operators the authority to alter elements of the State's basic education program. That is, the Act waives the basic education program required by the Constitution,

[10] For this reason, the trial court erred in determining that Act merely extends collective bargaining rights to charter employees without amending existing labor laws. CP 3768.

including the minimum instructional requirements identified in RCW 28A.250.220. *See* Sect. IV.A.2.b, *supra*.[11] The Act, however, fails to set forth the components of the basic education program that are waived. *Compare* RCW 28A.710.040(2)(b) *with, e.g.*, RCW 28A.710.220. Thus, there is no way that lawmakers could have understood the impact of the Act to the basic education program without devoting hours to a careful comparison between the Charter School Act and the Basic Education Act.

Given the paramount importance of basic education, it is no surprise that the Legislature has meticulously followed Article II, Section 37 when revising the minimum instructional requirements in the past. *See, e.g.*, Laws of 2013, ch. 323 § 2 (amending RCW 28A.150.220 to allow Kindergarten programs to use three of the minimum instructional school days for family conferences); *see also Naccarato v. Sullivan*, 46 Wn.2d 67, 76, 278 P.2d 641 (1955) (relying on the fact that the Legislature previously complied with Section 37 when amending the same provisions as basis to require compliance for new amendments). The Legislature violated Article II, Section 37 by failing to set forth these instructional requirements in enacting the Charter School Act.

[11] The trial court incorrectly determined that the Act merely "cross-references" the Basic Education Act, but "does not modify the statute." CP 3768. But allowing charter school operators to eliminate constitutionally required elements of the basic education program is clearly a modification of the Basic Education Act, not a mere cross-reference.

G. Organizational Plaintiffs Have Representational Standing Based on the Taxpayer Status of Their Members.

All parties agree that the three individual plaintiffs have standing to bring this lawsuit. CP 195. Further, the trial court correctly held that all of the organizational plaintiffs have standing on one or more grounds. CP 195, 327-28. Under these circumstances, the Court need not address standing. *See Lee v. State*, 185 Wn.2d 608, 615 n.3, 616, 374 P.3d 157 (2016) (where individual plaintiffs have taxpayer standing, the Court "need not reach" standing of organizations). To the extent Intervenors again challenge organizational plaintiffs' standing on appeal, the Court should reverse the trial court's erroneous ruling that representational standing cannot be based on their members' taxpayer status.

The organizational plaintiffs meet the three requirements for "representational" standing to bring suit on behalf of their taxpayer members: (1) the members would have standing to sue in their own right as taxpayers;[12] (2) the interests the organizations seek to protect are germane to their purposes (e.g., protecting the constitutionally guaranteed public school system, stopping for the second time the unconstitutional diversion of restricted public funds, and ensuring continued vitality of collective bargaining); and (3) the requested relief of invalidating the Act does not require participation of individual members. *See Int'l Ass'n of*

[12] *See* CP 210-13 ¶¶ 6-9, 214-18 ¶¶ 13-19, 219 ¶ 23; *see also* CP 42-45, 47.

Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 213-14, 45 P.3d 186 (2002), *as amended*, 50 P.3d 618 (2002).

Contrary to the trial court's ruling, this Court has held that an individual may have standing based on taxpayer standing and that an organization has representational standing based on its members' standing. *See City of Tacoma v. O'Brien*, 85 Wn.2d 266, 269, 534 P.2d 114, 115 (1975); *Int'l Ass'n of Firefighters, Local 1789*, 146 Wn.2d at 213-14. There is no reason to prohibit taxpayers from collectively challenging an unconstitutional expenditure of public funds where (as here) the other two representational standing criteria are met. Indeed, the Court noted in *Lee* that an organization "likely" had representational standing to challenge the constitutionality of an initiative on behalf of its taxpayer members. 185 Wn.2d at 615 n.3. Thus, the organizational plaintiffs have representational standing based on their members' taxpayer status, in addition to the other bases approved by the trial court.

V. CONCLUSION

The proponents of I-1240 and the Act share the common goal of creating charter schools as a replacement for the State's common schools and funding charters schools on the same basis as the common schools. I-1240 accomplished this goal in a straight-forward manner, and the Court properly held I-1240 unconstitutional. The Act merely changes the

characterization of charter school from a "common school" to an "alternative to a common school." And the Act concocts a funding scheme that avoids direct funding from the General Fund but still relies on diversion of General Fund money to other Opportunity Pathway Account programs to indirectly fund charter schools using restricted General Fund dollars. This Court should not allow such transparent game playing to trump the substance of the Act, which does exactly what this Court held unconstitutional in *LWV*.

RESPECTFULLY SUBMITTED this 10th day of July, 2017.

PACIFICA LAW GROUP LLP

By *s/ Paul J. Lawrence*
Paul J. Lawrence, WSBA # 13557
Jessica A. Skelton, WSBA # 36748
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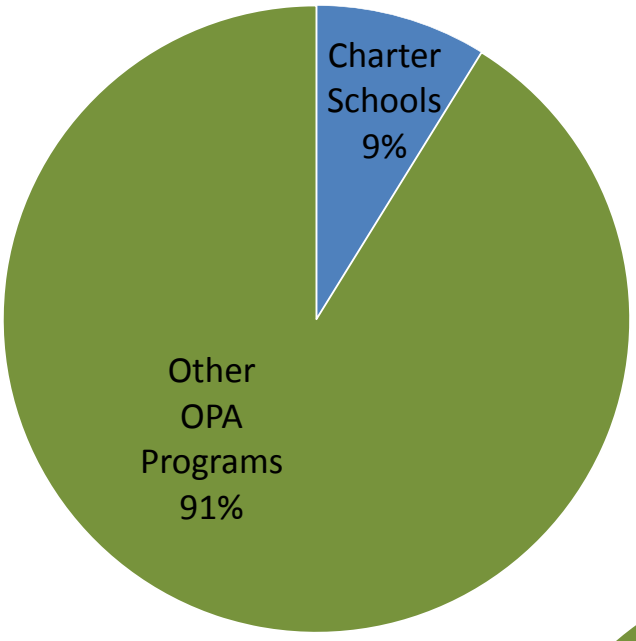
APPENDIX 1

"Differences" Between I-1240 and Charter School Act

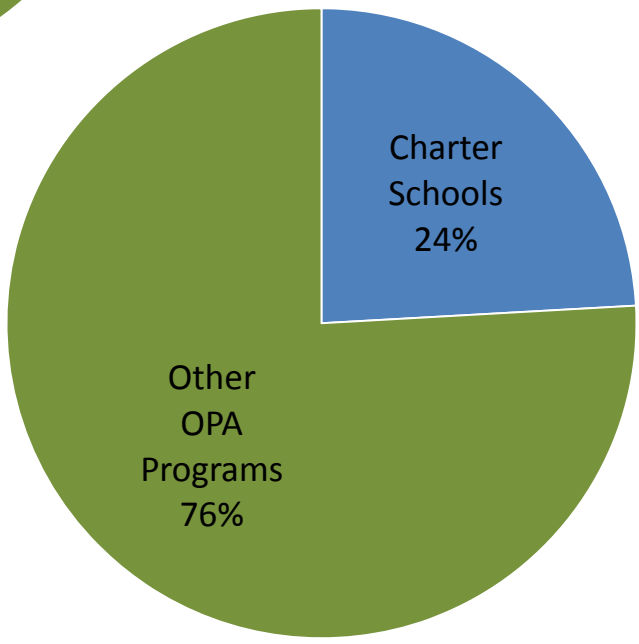
I-1240	Charter School Act
• Charter schools defined as "common schools" § 202(1)	• Charter schools defined as "alternative to traditional common schools" RCW 28A.710.020(1)(b)
• Charter schools paid for directly from General Fund (primary account used to fund common schools) § 222	• OPA used to pay for charter schools, but General Fund used to replace funding for other non-charter OPA programs RCW 28A.710.270
• Private organizations design "basic education" § 204(2)(b)	• Private organizations design "program of basic education" RCW 28A.710.040(b)
• 9-member pro-charter Charter Commission § 208(2), (3)	• 11-member Commission with 9 pro-charter members, Superintendent, and Board of Education President RCW 28A.710.070(3), (4)

APPENDIX 2

New Budget Appropriates Substantial Portion of OPA to Pay for Escalating Charter School Costs



FY 2016-17



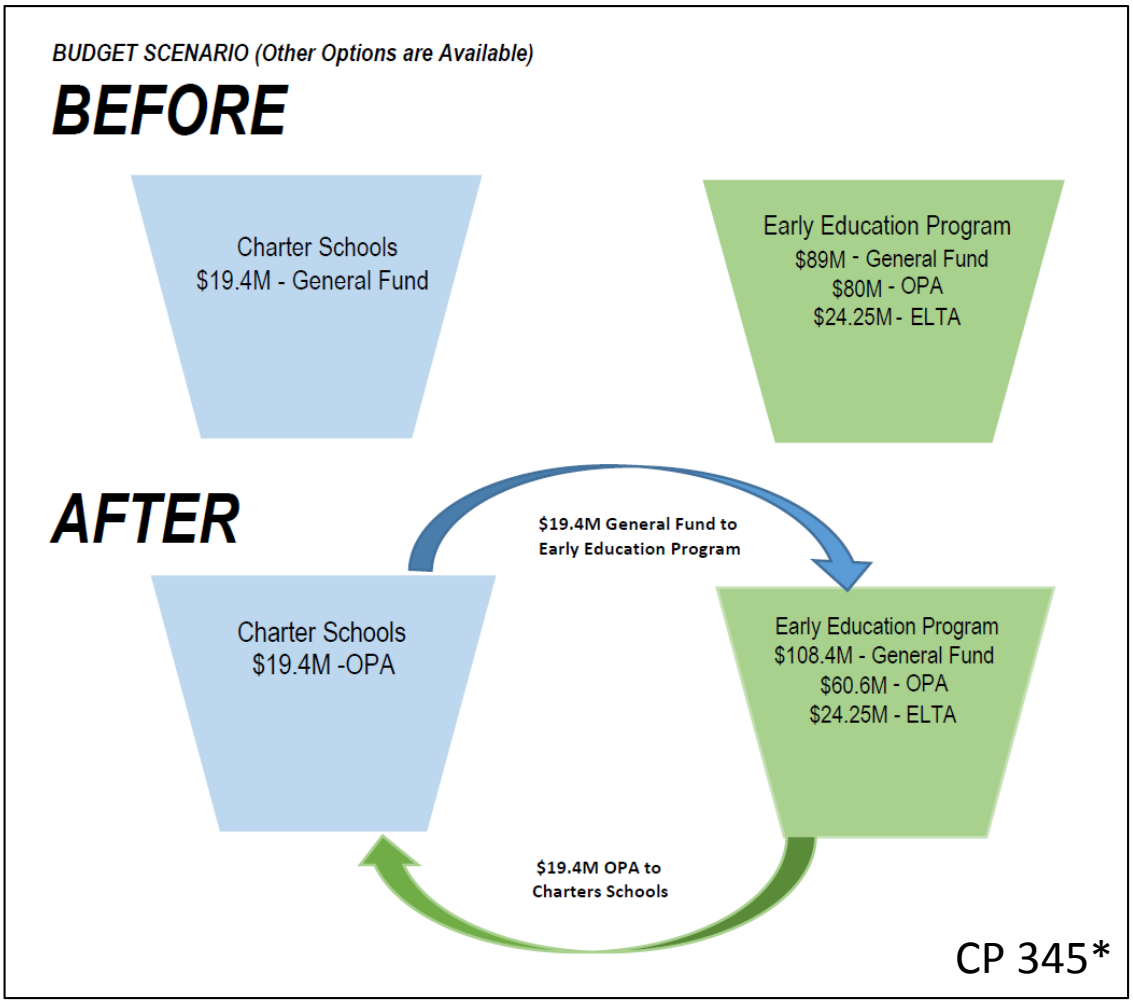
FY 2017-18

See 2016 Supp. Budget, §§ 501(3), (8), 516, 517, 610(1), (7), 612(1); 2017-19 Budget, §§ 501(3)(b), (8), 519, 520, 613(1), (7), 615(1), 1515, 1516, 1609(1), (7), 1611(1); *see also* n.4, *supra*.

APPENDIX 3

Legislature Plans to Use General Fund to Replace Funding for Non-Charter OPA Programs

Senate staff presented this "Fiscal Impact Report" comparing I-1240 ("Before") with the Charter School Act ("After"):

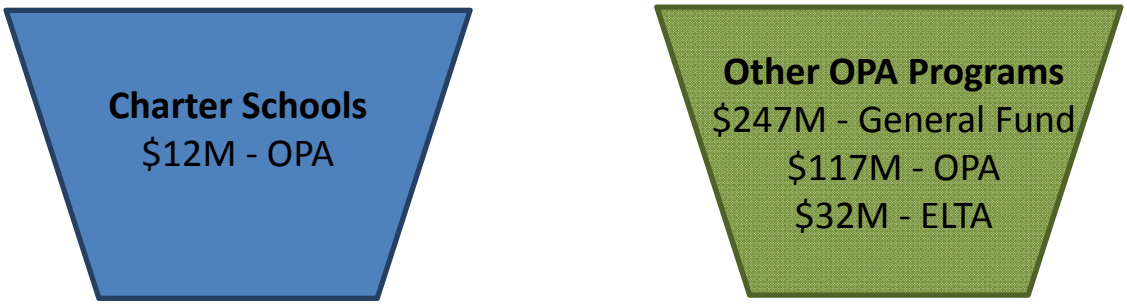


** Acronyms in the original Fiscal Impact Report have been revised for the convenience of the Court and the parties. An unaltered copy as presented to the Senate Ways and Means Committee is available at CP 345.*

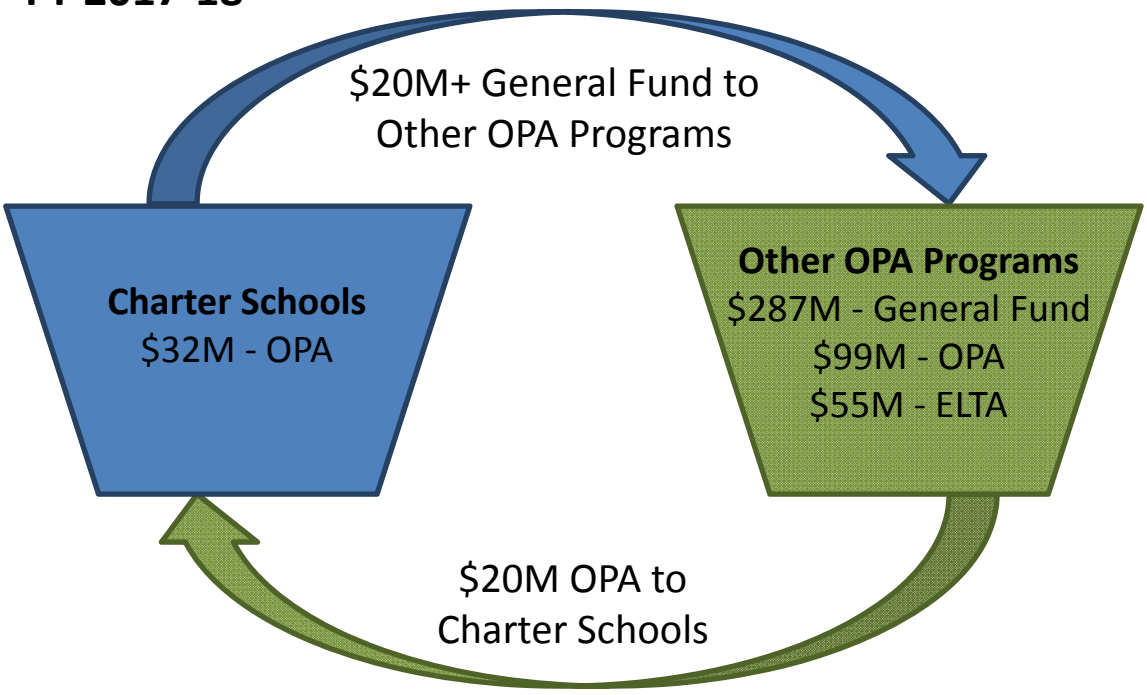
APPENDIX 4

New Budget Uses General Fund to Replace Funding for Non-Charter OPA Programs as Planned

FY 2016-17



FY 2017-18



See 2016 Supp. Budget, §§ 610(1), (7), 612(1); 2017-18 Budget, §§ 613(1), (7), 615(1), 1609(1), (7), 1611(1); *see also* n.4, *supra*.

No. 94269-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

EL CENTRO DE LA RAZA, a Washington non-profit corporation; LEAGUE OF WOMEN VOTERS OF WASHINGTON, a Washington non-profit corporation; WASHINGTON ASSOCIATION OF SCHOOL ADMINISTRATORS, a Washington non-profit corporation; WASHINGTON EDUCATION ASSOCIATION, a Washington non-profit corporation; INTERNATIONAL UNION OF OPERATING ENGINEERS 609; AEROSPACE MACHINISTS UNION, IAM&AW DL 751; WASHINGTON STATE LABOR COUNCIL, AFL-CIO; UNITED FOOD AND COMMERCIAL WORKERS UNION 21; WASHINGTON FEDERATION OF STATE EMPLOYEES; AMERICAN FEDERATION OF TEACHERS WASHINGTON; TEAMSTERS JOINT COUNCIL NO. 28; WAYNE AU, PH.D., on his own behalf and on behalf of his minor child; PAT BRAMAN, on her own behalf; and DONNA BOYER, on her own behalf and on behalf of her minor children,

Appellants,

v.

STATE OF WASHINGTON,

Respondent.

APPENDIX OF AUTHORITIES TO BRIEF OF APPELLANTS

PACIFICA LAW GROUP LLP
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Attorneys for Appellants

Appellants hereby submit excerpts from the following authorities is support of the Brief of Appellants.

Washington State Session Laws[1]

1. Laws of 1854, An Act Establishing a Common School System for the Territory of Washington.

2. Laws of 1865, Memorial in Relation to the Establishment of an Agricultural College in Washington Territory.

3. Laws of 1871, An Act Establishing a Common School System for the Territory of Washington.

4. Laws of 1877, An Act to Provide a System of Common Schools.

5. Laws of 1885-86, An Act to Establish a School for the Deaf, Mute, Blind and Feeble-Minded Youth of Washington Territory.

6. Laws of 1889, An Act to Establish a General Uniform System of Common Schools in the State of Washington, and Declaring an Emergency.

7. Laws of 1967, An Act Relating to Revenue and Taxation.

[1] Session laws are available at http://www.leg.wa.gov/CodeReviser/Pages/session_laws.aspx.

Washington Supreme Court Orders from *McCleary v. State*[2]

8. Order, *McCleary v. State*, No. 84362-7 (Wash. July 18, 2012).

9. Order, *McCleary v. State*, No. 84362-7 (Wash. Dec. 20, 2012).

10. Order, *McCleary v. State*, No. 85362-7 (Wash. Aug. 13, 2015).

11. Order, *McCleary v. State*, No. 85362-7 (Wash. Oct. 6, 2016).

Opinions of Washington Attorney General

12. Op. Wash. Att'y Gen. 1975, No. 1.

13. Op. Wash. Att'y Gen. 1998, No. 6.

14. Op. Wash. Att'y Gen. 2009, No. 8.

Secondary Authorities

15. Angie Burt Bowden, *Early Schools of Washington Territory* (Lowman & Hanford Co. 1935).

16. Dennis C. Troth, *History and Development of Common School Legislation in Washington* (Univ. of Wash. Pubs. in Social Sciences 1929).

[2] Supreme Court orders and other pleadings from *McCleary v. State* are available at http://www.courts.wa.gov/appellate_trial_courts/SupremeCourt/?fa=supremecourt.McCleary_Education.

17. J.H. Morgan, Washington Territory Superintendent of Public Instruction, et al., *Washington Schools: Pertinent Suggestions to the Constitutional Convention by the Board of Education*, Spokane Falls Review, July 17, 1889.

18. Louis Lerado, *Public Schools and the Convention, No. 2*, Tacoma Daily Ledger, July 3, 1889.

19. Louis Lerado, *The Convention and Education, No. 1*, Tacoma Daily Ledger, July 1, 1889.

20. *Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854-1889* (Univ. of Wash. Pubs. in Social Sciences 1940).

21. Office of the Sec'y of State, Div. of Archives & Records Mgmt., *Index to the Laws, Memorials and Resolutions Passed by the Washington Territorial Legislature 1853-1887* (1993).

22. Quentin Shipley Smith, *Analytical Index to The Journal of the Washington State Constitutional Convention 1889* (Beverly Paulik Rosenow ed., 1999).

23. Theodore J. Stiles, *The Constitution of the State and Its Effects Upon Public Interests*, 4 Wash. Hist. Q. 281 (1913).

24. Thomas William Bibb, *History of Early Common School Education in Washington* (Univ. of Wash. Pubs. in Social Sciences 1929).

25. Wash. State Historical Soc'y, *Building a State, Washington, 1889-1939* (Charles Miles & O. B. Sperlin eds., 1940).

26. Wash. State Planning Council, *A Survey of the Common School System of Washington* (1938).

RESPECTFULLY SUBMITTED this 10th day of July, 2017.

PACIFICA LAW GROUP LLP

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Jessica A. Skelton, WSBA # 36748
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Attorneys for Appellants

TAB 01

STATUTES

OF THE

TERRITORY OF WASHINGTON:

BEING THE CODE PASSED BY THE

LEGISLATIVE ASSEMBLY,

AT THEIR FIRST SESSION BEGUN AND HELD AT OLYMPIA, FEBRUARY 27TH, 1854.

ALSO, CONTAINING

THE DECLARATION OF INDEPENDENCE, THE CONTITUTION OF THE UNITED STATES, THE ORGANIC ACT OF WASHINGTON TERRITORY, THE DONATION LAWS, &C., &C.

PUBLISHED BY AUTHORITY.

OLYMPIA:
GEO. B. GOUDY, PUBLIC PRINTER.

1855.

up the share, devise, or legacy of any other devisee, legatee, or heir, the probate court, upon the petition of the person entitled to contribution or distribution of such estate, shall order the same to be made according to equity, and enforce such order with like effect as decrees in courts of equity.

SEC. 49. The term "will," as used in this act, shall be so construed as to include all codicils, as well as wills.

SEC. 50. All courts and others concerned in the execution of last wills, shall have due regard to the direction of the will, and the true intents and meaning of the testator, in all matters brought before them.

SEC. 51. If the probate court shall be satisfactorily informed that any person has in his possession the will of any testator, and refuses to produce the same for probate, such court shall have power to summon such person, and compel him by attachment to produce the same.

SEC. 52. This act shall take effect and be in force from and after the first day of May next.

AN ACT ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

CHAPTER I.

SCHOOL FUND.

SEC. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the principal of all moneys accruing to this territory from the sale of any land heretofore given, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund; the interest accruing from which shall be annually divided among all the school districts in the territory, proportionally to the number of children or youth in each between the ages of four and twenty-one years, for the support of common schools in said districts, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county

to lay an annual tax of two mills on a dollar, on all taxable property of the county, as shown by the assessment rolls made by the county assessors for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the said tax in the same manner as the other county tax is collected; and the said money so collected shall be paid over to the county treasurer, to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer, all money paid into the county treasury, arising from all fines for a breach of any penal laws of this territory. Such moneys shall be paid into the county treasury, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

CHAPTER II.

COUNTY SUPERINTENDENTS.

SEC. 1. There shall be elected by the legal voters of the respective counties, at the annual elections, a county superintendent of common schools for each county, who shall hold his office for the term of three years, and until his successor is duly qualified.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath faithfully to discharge the duties of his office, and to the best of his ability promote the interest of education within his county; which oath shall be in writing and placed on file in the county clerk's office.

SEC. 3. It shall be the duty of the superintendent to divide such portion of his county as shall be inhabited, into convenient school districts; to define the boundaries and numbers; and to prepare and keep in his

office a map of the districts of the county upon which the lines and boundaries of each district shall be clearly defined; he shall lay off new districts, or divide old ones when the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district, who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants fail to attend in sufficient numbers to do business as hereafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, writing, arithmetic, English grammar and geography; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate, certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only, and may be revoked sooner by the superintendent for good cause.

SEC. 6. The superintendent shall visit all the schools taught in his county by a qualified teacher, at least once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county.

SEC. 7. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall at least ten days before the first Friday in November of each year, make out from the district reports, a statement of the number of the scholars in the county; the number of school libraries; the number of school houses; the number of districts; in how many districts a school has been kept in the past year; what school books are principally used; what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this territory.

SEC. 8. It shall be the duty of the superintendent, at least fifteen days

before the first Friday in November of each year, to make an apportionment of the school fund in the county treasury among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four, and under twenty-one years, and certify the amount due to each district, which shall be drawn as hereafter directed; and he shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 9. When the districts shall have complied with the law, as hereafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts, for the amount of the school funds appropriated to each; on the presentation of which order, the treasurer of the county shall pay over to the clerks of the districts all moneys due the respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt, which shall be deposited with the superintendent, who shall credit the treasury of the county therewith, and charge the same to the proper district.

SEC. 10. The superintendent shall, in the name of the county, collect, or cause to be collected, all moneys due the school fund from fines, or from any other source in his county; and until the legislature shall make some provision for the disposal of the school lands given by congress to the territory for school purposes, it shall be the duty of the superintendent to preserve said lands from injury and trespass; and when it shall come to his knowledge that any trespass has been committed on such lands, he shall make complaint of the same before the grand jury of the proper county, at the first regular term of court after he has obtained a knowledge of such trespass; and all fines and other moneys thus collected shall be paid over to the treasurer of the county for the use of common schools, and divided in said county in the same manner as other school funds.

SEC. 11. Any person trespassing upon or injuring the school lands, as mentioned in the preceding section, shall be liable to be indicted for the same, and upon conviction, shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars.

SEC. 12. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year.

CHAPTER III.

SCHOOL MEETINGS.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, under the title of county superintendent. No number less than five legal voters shall constitute a quorum, to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular annual school meeting would have.

SEC. 3. Such meeting when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors. Of those so elected, the person having the highest number of votes, shall hold his office for the term of three years, and the person having the next highest number, shall hold his office for two years, and the person next highest one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons of those so elected, receive an equal number of votes, the duration of their term of office shall be determined by lot, in presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years, as he may have been elected, from the next annual school meeting, unless such

director shall be elected to fill vacancy, in which case he shall continue in office for the unexpired term. So that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office, to the best of their abilities; and to promote the interest of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1st. To call special meetings of the district whenever they shall deem it necessary;

2d. To make out a tax list of every district tax, containing the names of the taxable inhabitants in the district, and the amount of tax payable by each inhabitant set opposite his name;

3d. To annex to such tax list a warrant directed to the clerk of the district for the collection of the sums in such list mentioned, including five per cent. for the fees of said clerk;

4th. To purchase or lease a site for the district school house as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages out of the funds collected and paid to the clerk for such purpose, and to have the custody and safe keeping of the district school house;

5th. To contract with and employ teachers: *Provided*, That no teacher shall be employed, who shall not produce a certificate from the county superintendent as is required by law, of good moral character, and qualification to teach a district school;

6th. To give orders to the teachers on the district clerk for their wages.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term; they shall endeavor to procure the introduction of a good and uniform system of school books in their district; and when the teacher experiences difficulty in the government of the school, it shall be his duty to refer the cases of disorderly scholars to the directors, who shall decide how such scholars shall be punished, or whether they shall be dismissed from school.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, by giving bond to the district directors

in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office, as by law directed. If a clerk be elected to fill a vacancy, he shall continue in office for the unexpired term; and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be duty of the clerk of each district:

1st. To record the proceedings of his district in a book, to be provided for that purpose by the district;

2d. To give notice of annual or special meetings;

3d. To procure a list of all persons in the district between the ages of four and twenty-one years;

4th. To collect all district taxes which he shall be required by the warrant from the directors to collect within the time limited in each warrant for its return; and he shall have the same authority to enforce the collection of such tax as the county collector has for collecting the county tax, and he shall be allowed five per cent. for collecting;

5th. To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent at least twenty days before the first Friday in November of each year, a report containing the number of scholars in his district, over four and under twenty one years of age; how long a school has been kept in his district the past year; what school books are principally used; what proportion of the scholars in the district have attended school; and the amount of money paid to teachers.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district, to his successor, when his successor has legally qualified, and upon a refusal or neglect so to do, the directors shall forthwith bring suit upon his bond.

SEC. 13. There shall be an annual school meeting held in each district upon the first Friday in November; and notices of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called; and shall be posted up in three public places in the district, at least six days previous to the holding of such meeting.

SEC. 14. Every inhabitant over the age of twenty-one years, who shall have resided in any school district for three months immediately preceding

any district meeting, and who shall have paid, or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote.

SEC. 15. Any school meeting shall have power to adjourn from time to time, as occasion may require.

SEC. 16. A school meeting legally called, shall have power by the vote of a majority present, to levy a tax on all the taxable property in the district, as the meeting shall deem sufficient to purchase, or lease a suitable site for a school house, and to build, hire or purchase a school house and keep it in repair, and to furnish the same with necessary fuel and appendages, and to levy an additional tax on the district, for the purchase or increase of a district library, globes, maps and such apparatus as the interest and well being of the school shall require. The library shall consist of such books as the district meeting shall direct.

SEC. 17. In all cases when a tax is to be levied, it shall be stated in the notices given of the meeting, for what purpose or purposes a tax is to be levied.

SEC. 18. When a district is organized, it shall be to all intents and purposes a body corporate, capable of suing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demands for or against their district, and notice shall be served upon one of the directors of any suit brought against a district.

SEC. 19. All district taxes shall be assessed by the directors according to the valuation of property made for the assessment of county taxes, and shall be collected by the clerk of the district, with an addition of five per cent. on the same, which the clerk shall receive for his services. Any person aggrieved by an excessive assessment of the directors of any school district, may have the same reduced by his own affidavit or any competent testimony, to the satisfaction of the clerk.

TEACHERS.

SEC. 20. It shall be the duty of every teacher of a common school, to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his duty to keep a register of the names of the children attending school, their age, the time when they begin, the time they continue, and of their daily attendance, which register shall be filed with the clerk of the district at the close of every term.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings, the directors whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have power to repeal, alter or modify their proceedings from time to time, as occasion may require.

SEC. 4. District meetings legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with, and for the benefit of schools, and the promotion of education in the district.

SEC. 5. Any new district failing to organize and report to the county superintendent, the number of children over four and under twenty-one years of age in said district, at least twenty days before the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent, as is required in section eleven, of the chapter entitled "school meetings," in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report, any inhabitant of such district may make such report verified on oath, and the county superintendent shall receive it, the same as if made by the clerk.

SEC. 6. The county superintendent shall apportion all the county school fund for that year among those districts only which have organized and reported according to law.

SEC. 7. No district shall be allowed to draw the county school fund

from the treasury, apportioned to it, until it shall raise an amount by tax or otherwise in said district to be expended in paying teachers and building school houses in said district, equal to the amount to which such district is entitled out of the county school fund; nor until it shall satisfy the county superintendent, that a school has been kept in said district by a qualified teacher, for at least three months during the year immediately following the apportionment.

SEC. 8. When the clerk of any district shall satisfy the county superintendent, that an amount has been raised by tax or otherwise in his district, for the support of teachers, equal to the amount apportioned to them from the county fund, and that a school has actually been kept by a qualified teacher as provided in the preceding section, the superintendent shall then issue an order on the county treasury in favor of the clerk of said district, for the amount to which such district is entitled, out of the county school fund.

SEC. 9. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof, shall be again added to the county school fund, and divided again among all the districts.

SEC. 10. Whenever a school is kept in any district, the teacher of which shall be supported out of the general county school fund, or by tax on the district as aforesaid, such school shall be open and free to all children between the ages of four and twenty-one years, in such district.

SEC. 11. The directors of any district may permit scholars living out of the district, to attend school, with or without charge, as they may deem proper.

SEC. 12. No person shall be disqualified to hold the office of county superintendent, district director or clerk, on account of holding any other office within the territory at the same time.

SEC. 13. It shall be the duty of the directors to appoint a suitable person for librarian, when the district shall have procured a library.

Passed April 12, 1854.

AN ACT IN RELATION TO COUNTIES.

TAB 02

STATUTES

OF THE

TERRITORY OF WASHINGTON,

MADE AND PASSED

At a Session of the Legislative Assembly begun and held at the City of Olympia
on Monday the Fourth day of December, 1865, and ended on Monday
the Twenty-seventh day of January, 1866.

NINETIETH YEAR OF INDEPENDENCE.

PUBLISHED BY AUTHORITY.

OLYMPIA:
T. F. McELROY, PRINTER.
1866.

And inasmuch as the organic act provides that laws shall relate to but one subject, which shall be expressed in the title, that Congress give its consent to the adoption of laws reported by such code commission, where codes of procedure are provided, in which, of necessity, several kindred subjects are included.

Passed the House of Representatives January 16, 1866.

EDWARD ELDRIDGE,
Speaker of the House of Representatives.

Passed the Council January 16, 1866.

HARVEY K. HINES,
President of the Council.

MEMORIAL

IN RELATION TO THE ESTABLISHMENT OF AN AGRICULTURAL COLLEGE IN WASHINGTON TERRITORY.

To the Honorable Senate and House of Representatives of the United States of America in Congress assembled:

Your memorialists, the Legislative Assembly of the Territory of Washington, would respectfully represent:

That this Legislative Assembly, in the year 1864, passed an act accepting the propositions offered to the different States and Territories by virtue of the provisions of an act passed by the Congress of the United States, entitled "an act donating public lands to the several States and Territories, which may provide colleges for the benefit of agriculture and the mechanic arts;" that by subsequent legislation this Legislative Assembly established and located an agricultural college, and appointed commissioners to select a site for said college and contract for the purchase thereof; and further provided for the government and management of said college by a board of trustees for the location, entry and sale of lands selected as provided in said act of Congress, and the proper investment of the proceeds of said sales; that in consequence of the legislation of this Legislative Assem-

bly, a site for said college was selected and the purchase thereof contracted for by commissioners appointed for that purpose; that the board of trustees fully organized and caused the selection of thirty thousand acres of land appropriated by Congress, and made application to enter the same in the proper land office of the United States; that afterwards the Commissioner of the General Land Office of the United States decided that the said act of Congress did only apply to the States and not to the Territories of the United States. Wherefore, in view of the premises aforesaid, your memorialists respectfully petition your honorable body to extend the benefits of the said act of Congress to the Territory of Washington, to the end that the legislation had in this Territory on the subject matter may be carried into practical effect, and thereby material aid be extended for the development of the agricultural resources and the advancement of the mechanic arts in this Territory.

Passed the House of Representatives December 21, 1865.

EDWARD ELDRIDGE,
Speaker of the House of Representatives.

Passed the Council January 3, 1866.

HARVEY K. HINES,
President of the Council.

MEMORIAL

TO HIS EXCELLENCY THE PRESIDENT OF THE UNITED STATES IN REFERENCE TO THE COD AND OTHER FISHERIES.

To His Excellency Andrew Johnson, President of the United States:

Your memorialists, the Legislative Assembly of Washington Territory, beg leave to show:

That abundance of codfish, halibut, and salmon of excellent quality have been found along the shores of the Russian Possession.

TAB 03

STATUTES

OF THE

TERRITORY OF WASHINGTON,

MADE AND PASSED

AT A SESSION OF THE LEGISLATIVE ASSEMBLY BEGUN AND HELD AT OLYMPIA
ON THE SECOND DAY OF OCTOBER, 1871, AND ENDED ON THE
THIRTIETH DAY OF NOVEMBER, 1871.

NINETY-SIXTH YEAR OF INDEPENDENCE.

PUBLISHED BY AUTHORITY.

OLYMPIA:
PROSCH & McELROY, PRINTERS.
1871.

SEC. 5. The same fees shall be allowed for the services of writs of summons and subpœnas in chancery, that are now allowed for services of complaints and notice.

SEC. 6. The first paragraph of section 363, of the act to which this is amendatory, shall be amended so as to authorize, in addition to the judgment debtor or his representatives, any person who may be interested in the said property, to likewise appear and file his objections thereto and be heard thereon.

The following portion of paragraph four of said section, is hereby repealed, viz:

"An order confirming a sale shall be a conclusive determination of the regularity of the proceedings concerning such sale as to all persons in any other action, suit or proceeding whatever."

Passed the House of Representatives November 24, 1871.

J. J. H. VAN BOKKELEN,
Speaker of the House of Representatives.

Passed the Council November 28, 1871.

H. A. SMITH,
President of the Council.

Approved November 29, 1871.

EDWARD S. SALOMON,
Governor of Washington Territory.

AN ACT

ESTABLISHING A COMMON SCHOOL SYSTEM FOR THE TERRITORY OF WASHINGTON.

CHAPTER I.

SECTION. 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That the Legislature shall, in joint convention during its present session, and every two years

hereafter, elect a Territorial superintendent of common schools, who shall hold his office for two years and until his successor is duly elected and qualified.

SEC. 2. It shall be the duty of said Territorial superintendent to disseminate intelligence in relation to the method and value of education.

SEC. 3. He may examine all who apply to him for certificates to teach school, and his certificate shall be valid in the whole Territory, and he shall be entitled to receive the same fees for certificates as county superintendents. He may call a teachers' convention at such time and place as he shall deem conducive to the educational interests of the Territory. He shall prepare and forward to county superintendents printed blanks, designating the questions he desires answered, on or before October first of each year.

SEC. 4. It shall be the duty of all the county superintendents of schools to forward to the Territorial superintendent a copy of their annual report forthwith, and they shall also state what school books would give most general satisfaction in their respective counties.

SEC. 5. It shall be the duty of the Territorial superintendent to make out a report from the reports of the county superintendents, and any other means of information he may have, of the condition of the schools in the Territory, and shall state what school books seem to be most popular in the Territory. He shall also recommend some series of school books to be introduced throughout the Territory, and he may make any suggestions he may think best for the promotion of education. He shall publish his Territorial report in some leading newspaper of the Territory, with a request that other papers copy.

SEC. 6. He shall make a report to the Legislature at its next regular session and every regular session thereafter, within ten days after convening, embodying all the information mentioned in section 5, and any other information and recommendations he deems advisable.

SEC. 7. The Territorial superintendent shall receive as a

salary out of the Territorial treasury, three hundred dollars annually, which shall include office rent, stationery, printing and all other incidental expenses of his office; and the Territorial auditor shall issue an order for said amount, which shall be paid by the treasurer out of any funds not otherwise appropriated.

SEC. 8. The Territorial superintendent shall qualify within sixty days after notice of his election, by filing in the office of the Secretary of the Territory, an oath that he will faithfully discharge the duties of the office according to the best of his abilities. Whereupon the Governor shall issue to him a commission the same as to other Territorial officers; and in case of vacancy from any cause the Governor may appoint to fill the vacancy until the meeting of the next Legislature.

CHAPTER II.

SEC. 1. That the principal of all moneys accruing to this Territory from the sale of any lands heretofore given or which may hereafter be given by the Congress of the United States for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the Territory proportionally to the number of children or youth in each, between the ages of four and twenty-one years, for the support of common schools in said district, and for no other use or purpose whatever.

SEC. 2. For the purpose of establishing and maintaining common schools, it shall be the duty of the county commissioners of each county to levy an annual tax of four mills on a dollar on all taxable property of the county as shown by the assessment rolls made by the county assessor for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect the siad tax in the same

manner as other county tax is collected, and the said money so collected shall be paid over to the county treasurer to be appropriated for the hire of school teachers in the several school districts, to be drawn in the manner hereinafter prescribed; neither shall it be lawful for any county treasurer to receive county orders in payment for county school tax nor to pay out any school money on county orders.

SEC. 3. For the further support of common schools, there shall be set apart by the county treasurer all moneys paid into the county treasury arising from all fines for a breach of any law regulating licenses for the sale of intoxicating liquors, or for the keeping of bowling alleys or billiard saloons, or from any penal laws of this Territory. Such moneys shall be paid into the county treasury and be added to the yearly fund raised by tax in each county and divided in the same manner.

SEC. 4. That it shall be the duty of the county auditor of each county to report to the county superintendent of common schools, at least twenty days before the first Friday in November of each year, the amount of school tax levied in their respective counties for that year, and that it shall be the duty of the clerk of the district court, at the close of every term thereof, to report to the superintendent the amount of fines imposed during said term of court; and that it be the duty of all justices of the peace to report to the superintendent, at least twenty days before the first Friday of November of each year, the amount of fines imposed and collected by them for the past year.

CHAPTER III.

COUNTY SUPERINTENDENTS.

SEC. 1. There shall be elected by the legal voters of the respective counties in Washington Territory, a county superintendent of common schools for each county, who shall be elected at the general election of 1872, and at the regular election held

biennially thereafter, who shall hold his office for the term of two years and until his successor is elected or appointed and qualified. And in case of a vacancy occurring in said office by removal, death or otherwise, the county commissioners of each county are authorized to appoint a county school superintendent as in all other cases of vacancies in their respective counties, who shall qualify in the same manner as the elected superintendent, and perform all the duties of the office according to this law, for the unexpired term for which he was appointed, and until his successor is elected and qualified.

SEC. 2. The superintendent shall qualify within ten days after notice of his election, by taking an oath to faithfully discharge the duties of his office, and to the best of his ability promote the interest of education within his county, which oath shall be in writing and placed on file in the county auditor's office.

SEC. 3. It shall be the duty of the superintendent to district the whole county, so that every resident of the county shall be included in some district, and to divide such portion of his county as shall be inhabited, into convenient school districts, to define the boundaries and numbers, and to keep in his office a map of the districts of the county, upon which the lines and boundaries of each district shall be clearly defined. He shall lay off new districts or divide old ones where the public good shall require it.

SEC. 4. Whenever any school district shall be formed by the superintendent, it shall be his duty to prepare a notice in writing of the establishment of such district, describing its boundaries, and to deliver the same to some taxable inhabitant of such district who shall have asked for the formation of the same. It shall be the duty of said inhabitant, within two weeks after the receipt of such notice, to notify the other inhabitants of the district of the time and place of the first district meeting, which time and place he shall fix by written notices, and which shall be posted up in three public places in the district, at least ten days previous to the time of meeting. In case the inhabitants

fail to attend in sufficient numbers to do business, as hereinafter directed, notice may be renewed at such times as may be thought proper.

SEC. 5. It shall be the duty of the county superintendent to be at the county seat on the third Friday and Saturday of May and November of each year, for the purpose of examining teachers and for the transaction of other business, and he shall give ten days public notice of the same by posting up handbills or otherwise. And any person or district applying on different days for the transaction of such business, shall pay the superintendent a reasonable compensation for his trouble, and not exceeding the sum of two dollars, and any teacher examined on a different day shall pay the superintendent the sum of two dollars.

SEC. 6. It shall be the duty of the superintendent to examine all persons who wish to become teachers in his county; he shall examine them in orthography, reading, arithmetic, defining, penmanship, English composition, English grammar and geography, history of the United States; and if he be of the opinion that the person examined is competent to teach said branches, and that he or she is of good moral character, he shall give such person a certificate certifying that he or she is qualified to teach a common school in said county; such certificate shall be for the term of one year only and may be revoked sooner by the superintendent for good cause; but in the examination of the teachers he may make a distinction according to qualification, granting a certificate of qualification to teach in any specified district if the applicant therefor be qualified for the school of such district, and not a county certificate, which certificate, so granted, shall only be for six months, and may for good cause be sooner revoked.

SEC. 7. The superintendent shall visit all the schools in his county once a year; he shall give such information and encouragement as he may think necessary, and endeavor to promote the introduction of a good and uniform system of school books throughout the county, for which service he shall receive three dollars for each school visited, and the same mileage for going

to and returning from said school that sheriffs receive in the county in which they reside, to be paid out of the county treasury of said county.

SEC. 8. It shall be the duty of the superintendent to receive the district reports hereinafter provided for, and keep them on file in his office, and he shall, on or before the first day of January of each year, make out from the district reports a statement of the number of scholars in the county, the number of school libraries, the number of school houses, the number of districts, in how many districts the school has been kept the past year, what school books are principally used, what proportion of all the scholars in the county have attended school for the past year, and the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper in this Territory.

SEC. 9. It shall be the duty of the superintendents, on or before the first Monday of January and July of each year, to make an apportionment of the school fund in the county treasury, among the several school districts in their respective counties, in proportion to the number of persons in the district over the age of four and under twenty-one years, and certify the amount due each district, which shall be drawn as hereinafter directed, and shall forthwith notify the clerks of the school districts of the amount due their respective districts.

SEC. 10. When the district shall have complied with the law as hereinafter directed, it shall be the duty of the superintendent to issue orders on the county treasury in favor of the clerks of the districts for the amount of the school fund appropriated to each, on the presentation of which order the treasurer of the county shall pay over to the clerks of the districts all moneys due their respective districts, and the clerks shall endorse on said order a receipt for so much as shall be paid thereon, and they shall also sign a duplicate receipt which shall be deposited

with the superintendent, who shall credit the treasury of the county therewith and charge the same to the proper district.

SEC. 11. The said superintendent shall be allowed out of the county treasury, in compensation for his services, the sum of twenty-five dollars a year. The county commissioners may, in their discretion, if they think the services rendered demand it, increase his salary to any sum not exceeding five hundred dollars a year; but in all cases where the salary exceeds the sum of twenty-five dollars, one-half of the excess shall be paid out of the school fund: *Provided, also,* That a proper allowance shall be made in addition thereto, for necessary books and stationery, and for the preparing of the map required by section 3.

SEC. 12. The school superintendent of each county shall, in all cases, be a qualified teacher of any school within the county for which he is elected.

CHAPTER IV.

SEC. 1. A school meeting may be called at any time for the purpose of organizing a new district, as provided in section four, chapter two. No number less than five legal voters shall constitute a quorum to do business in any district meeting.

SEC. 2. Such school meeting shall have power to do all necessary business the same as the regular school meeting would have.

SEC. 3. Such meeting, when assembled, shall organize by the appointment of a chairman and secretary. It shall then proceed by ballot to elect three directors; of those so elected, the person having the highest number of votes shall hold his office for the term of three years, and the person having the next highest number shall hold his office for two years, and the person next highest, one year, and each shall continue in office until his successor is elected and qualified. In case two or more persons

of those so elected receive an equal number of votes, the duration of their term of office shall be determined by lot in the presence of the chairman and secretary.

SEC. 4. The term of office of a director not elected at the regular annual meeting, shall continue for the term of one, two or three years as he may have been elected, from the next annual school meeting, unless such director shall be elected to fill a vacancy, in which case he shall continue in office for the unexpired term, so that at every annual school meeting after the first, there shall be elected one school director for the term of three years.

SEC. 5. The directors shall qualify within ten days after their election, by taking an oath or affirmation faithfully to discharge the duties of the office to the best of their abilities, and to promote the interests of education within their district. This oath shall be in writing and filed with the clerk of the district.

SEC. 6. It shall be the duty of the directors of every school district:

1. To call special meetings of the district whenever they shall deem it necessary, and when a vacancy occurs by death, resignation or otherwise, the directors shall call a special meeting of the district to fill such vacancy.

2. To make out a tax list for their district whenever an assessment has been made, containing the names of all persons liable to pay taxes in the district, and the amount payable by each inhabitant, set opposite his or her name.

3. To annex to such tax list a warrant directed to the clerk of the district, for the collection of the sums in such list mentioned, including such per centage for fees of clerk as they may deem just, not exceeding five per cent.

4. To purchase or lease a site for the district school house, as designated by a meeting of the district, and to build, hire or purchase, keep in repair and furnish such school house with necessary fuel and appendages, and such privies and outhouses as decency requires, out of the funds collected and paid to the clerk

for such purposes, and to have the custody and safe keeping of the district school house.

5. To contract with and employ teachers; and they shall require a teacher to get a certificate from under the hands of the Territorial or county superintendent. No engagement with a teacher shall be valid so as to entitle any district to draw their apportionment of public money, unless such examination has been previously made.

6. To give orders to the teachers on the district clerk for their wages.

7. To discharge any school teacher for neglect of duty or any cause that, in their opinion, renders his or her service unprofitable as a teacher, by first paying him or her for what time he or she may have been teaching.

SEC. 7. Any two of said directors shall constitute a quorum to do business.

SEC. 8. It shall be the duty of the directors to visit and examine the school or schools of their respective districts, at least twice in each term. They shall endeavor, in connection with the county superintendent, to procure the introduction of a good, uniform system of school books in their district.

CLERKS.

SEC. 9. The first annual school meeting shall also elect a district clerk, who shall continue in office for the term of three years. He shall qualify within ten days after his election, in the same manner as the directors, and give a bond to the district directors in such sum as they may require, that he shall well and truly perform the duties of his office, and pay over all moneys coming into his hands by virtue of his office as by law directed. If a clerk be elected to fill a vacancy he shall continue in office for the unexpired term, and if elected at the first meeting, not being the regular annual meeting, he shall continue in office three years from the next annual meeting.

SEC. 10. It shall be the duty of the clerk of the district

1. To record the proceedings of his district in a book to be provided for that purpose by the district.

2. To give notice of annual or special meetings.

3. To procure a list of all residents in the district between the ages of four and twenty-one years.

4. To give due notice, at least ten days before any tax that may be assessed shall be collected, by written or printed notices in three of the most public places in the district.

5. To collect all district taxes which shall be required by the warrant from the directors to collect, within the time limited in each warrant for its return, and he shall have the same authority as the county collector to enforce the collection of such tax, and he shall be allowed for collecting, such per centage as the directors may deem proper.

6. To retain a copy of all reports made to the county superintendent relating to the affairs of the district.

SEC. 11. It shall be the duty of the clerk to furnish the county superintendent, within ten days after the first Friday in November of each year, a report containing the number and names of persons in his district over four and under twenty-one years of age, how long a school has been kept in his district by a qualified teacher during the past year, what school books are principally used, what proportion of the scholars in the district have attended school, and the amount of money paid to teachers or otherwise expended.

SEC. 12. The clerk of each district shall, at the close of each year of his office, make out in writing a just and true account of all moneys received by him for the use of the district, and the manner in which the same shall have been expended, which account shall be read at the annual district meeting. The clerk shall pay over all moneys remaining in his hands belonging to the district to his successor, when his successor has legally qualified, and upon refusal so to do the directors shall forthwith bring suit upon his bond.

SEC. 13. District clerks shall be treasurers of their respective districts.

SEC. 14. All moneys coming into the hands of the district clerk shall remain in the hands of the clerk or clerks, subject to the order of the directors, and shall not be paid out in any other way.

TEACHERS.

SEC. 15. It shall be the duty of every teacher of a common school to procure a certificate of qualification and good moral character, before entering on the duties of a teacher. It shall be his or her duty to keep a register of the children attending school, their age and the time when they began, the time they continue and of their daily attendance, and with the same, he or she shall give a list of the text books principally used in his or her school, and said register and list of books shall be in duplicate and filed with the clerk of the district at the close of every term, properly certified to by the teacher, the one copy for the use of the clerk and the other shall, by the clerk, be furnished to the county superintendent with his annual report.

SEC. 16. No books or publication of a sectarian or denominational character shall be used in any district or public school, neither shall any sectarian or denominational doctrine be taught therein, and any school district, the officers of which shall knowingly allow any school to be taught in violation of this section, such officer or officers assenting to the same, shall be liable to a fine of one hundred dollars to be paid into the common school fund of the county.

SEC. 17. Seventy-two days of school actually taught shall constitute a quarter.

CHAPTER V.

MISCELLANEOUS PROVISIONS.

SEC. 1. The minutes of the first school meeting shall be signed by the chairman and secretary, and delivered to the clerk of the district, who shall file the same in his office.

SEC. 2. In all school meetings the director whose term of office shall first expire, shall act as chairman, and the clerk of the district shall act as secretary.

SEC. 3. Districts shall have the power to repeal, alter or modify their proceedings from time to time as occasion may require.

SEC. 4. District meetings, legally called, shall have power to levy a tax upon the property of the district for any purpose whatever, connected with and for the benefit of schools and promotion of education in the district.

SEC. 5. Any new district failing to organize and report to the county superintendent the number of children over four and under twenty-one years of age in said district, within ten days after the first Friday in November, or any district having been organized for the term of one year or more, failing to report to the county superintendent as required in section eleven of the chapter entitled "clerks" in this act, shall not be entitled to any portion of the county school fund for the year: *Provided*, That if the clerk of any school district shall fail to make such report according to law, the superintendent shall notify directors and they may make the report within twenty days after the time required by law, and the county superintendent shall receive the same as if made by the clerk.

SEC. 6. No district, except those organized less than one year, shall be allowed to draw its apportioned county school fund from the treasury until it shall satisfy the county superintendent that a school has been kept in the district by a qualified teacher for at least three months, except as hereinafter provided.

SEC. 7. When the clerk of any school district shall satisfy the county superintendent that any amount has been raised in his district for the support of teachers or building school houses, and that a school has actually been kept by a qualified teacher, as provided for in the preceding section, the superintendent shall issue an order on the county treasurer, in favor of the clerk of

such district, for its apportionment of county school funds in the treasury to the credit of such district.

SEC. 8. Any district failing to comply with the provisions of the two preceding sections for the term of one year after any apportionment, shall forfeit its apportionment, and the amount thereof shall be again added to the county school fund and divided again among all the districts.

SEC. 9. Districts having less than fifteen scholars between the ages of four and twenty-one years, and which, in the opinion of the directors are not able to support a school, shall be excepted from the requirements of the three preceding sections, and may, by organizing and reporting to the superintendent according to law, draw their proportion of the school money without being required to comply with the provisions of the school law any further than the said organization and report is concerned; and in such districts, three legal voters shall constitute a quorum to do business, and it shall be the duty of the clerk of such districts to let out all county school funds so received, at interest, for the use of the district, on good security, until such time as it may be required for school purposes in said district. The clerk of the district and his securities shall also be responsible for such money: *Provided*, That if the term of three years shall elapse before such weak district shall have at least three months school, such districts shall not be entitled to any apportionment of the county school funds after the expiration of the said three years, until they shall have complied with the law in the same manner as regularly organized districts are required to do.

SEC. 10. When a district is organized, it shall be to all intents and purposes a body corporate, capable of sueing and being sued, and fully competent to transact all business appertaining to schools or school houses in their own district; and it shall be the duty of the directors to prosecute or defend any demand for or against their district, and notice shall be served upon one of the directors of any suit brought against the district.

SEC. 11. The directors of any school district may permit

scholars who are not residents, to attend school in their district with or without charge, as they may deem proper.

SEC. 12. Any persons desirous of sending any scholar or scholars out of their district to any other school, may do so by first getting a permit in writing from the directors in the district where they reside, and such scholar or scholars so sent to school out of their district, shall be entitled to their equal proportion of the public school fund belonging to their district: *Provided*, That such parent or guardian shall get a certificate from the teacher where such child or children have attended school, showing the number of days of attendance, with the price of such schooling, but in no case shall a parent or guardian draw more money than will be sufficient to pay the schooling of such scholar during their attendance out of their school district.

SEC. 13. Upon the presentation of such certificate to the clerk of the district in which such scholar or scholars reside, the clerk shall pay to such parents or guardian the apportionment due them out of the funds belonging to said district, taking their receipt for the same, which receipt shall be endorsed on said certificates, showing the amount actually received, and signed by the party receiving the money, and said certificate, so endorsed, shall be a sufficient voucher to the credit of the clerk in making his settlement with the directors or in paying over to his successor the fund belonging to said district.

SEC. 14. When the clerk of any such school district shall have failed to draw from the county treasury the apportionment for said district, either by reason of not complying with the requirements of section seven of this chapter, or otherwise, then the certificate shall be presented to the county superintendent who shall issue an order on the county treasurer in favor of the person or persons entitled to receive the same, and a receipt in due form shall be given to the treasurer for the amount paid, the duplicate of which shall be endorsed on the certificate in the hands of the superintendent, who shall credit the treasury of the county therewith and charge the same to the proper district

in the same manner as when paid to the clerk according to section ten, chapter two.

SEC. 15. Any scholar having thus received his or her portion of school money, cannot be entitled to any further benefit out of the fund of said district in case of a school being taught therein, until after the next annual apportionment is made.

SEC. 16. In all cases when a tax is to be levied, it shall be stated in the notice given of the meeting for what purpose or purposes the tax is to be levied.

SEC. 17. If a district meeting be held and levy a tax on all the taxable property in the district, the property of non-residents shall be assessed in equal proportion with the rest by the directors of the district.

SEC. 18. The directors may add such per centum, not exceeding five, as they may deem requisite, to remunerate the clerk for his services as collector, but the amount shall be specified and added as a separate item in the schedule or account of taxes so levied or assessed, and when any person shall pay the same within ten days after the notice of such tax is made public by the clerk, in accordance with the fourth clause of section ten, of chapter three, the per centage shall be deducted, but in all other cases it shall be collected.

SEC. 19. There shall be an annual meeting held in each district upon the first Friday in November, and notice of all annual or special meetings shall be in writing, signed by the directors or the clerk of the district, and shall state the object for which the meeting is called, and shall be posted up in three public places in the district at least ten days previous to holding such meeting.

SEC. 20. Every inhabitant over the age of twenty-one years who shall have resided in any school district for three months immediately preceding any district meeting, or who shall have paid or be liable to pay any tax except road tax in said district, shall be a legal voter at any school meeting, and no other person shall be allowed to vote, and in the selection of a site for a

school house, for raising a tax, no person shall be allowed to vote except persons liable to pay a school tax.

SEC. 21. Any school meeting shall have power to adjourn from day to day as occasion may require.

SEC. 22. A school meeting, legally called, shall have power by a vote of a majority present, to levy a tax on all taxable property within the district.

SEC. 23. The tax payers may, with the consent of the directors of their district, perform by labor their portion of taxation for the erection of school houses and shall be so returned by the clerk of said district.

SEC. 24. No person shall be disqualified for the office of county supesintendent, district director or clerk, on account of holding any other office within the Territory at the same time.

SEC. 25. It shall be the duty of the directors to appoint a suitable person for librarian when the district shall have procured a library.

SEC. 26. School superintendents, directors and clerks shall be competent to administer oaths or affirmations in any case occurring under the provisions of this act.

SEC. 27. Where, in any county, any of the moneys mentioned in chapter two, section three of this act, are by existing laws set apart to any other fund or for any other purpose, this act shall not be so construed as to affect the disposition of said funds so set apart.

SEC. 28. Failure of a clerk to make out his report in proper time shall not work a forfeiture of the apportionment to his district, if the report shall reach the superintendent before he apportions the fund.

SEC. 29. No order of the superintendent shall be drawn upon the county treasurer in favor of any district which fails to have or keep up its organization, and any district having been for three years recognized as an organized district by the inhabitants of the same and by the superintendent, shall, so long as it complies with the forms of law, be to all intents, for the purposes of this act, a legal district.

SEC. 30. Any person or persons asking any action of the superintendent which shall affect the boundaries of any district, shall notify the clerk of said district, in writing, of his intention to ask for the same, stating what action is or will be asked, and the time (not less than ten days) when the same will be heard, and shall file a certified copy of the said writing with the superintendent.

SEC. 31. When satisfied such notice has been given, the superintendent shall proceed to examine the case, unless for good cause further time is asked by either party, or in the absence of either party he may consider substantial justice cannot be done, in which case he must set some future time for its consideration.

CHAPTER VI.

SEC. 1. All guardians, parents and other persons in this Territory having, or who may hereafter have, the immediate custody of any child or children between the ages of eight and sixteen years, shall send the same to school at least three months in each year said child or children may remain under their supervision: *Provided*, That if the person or persons having the custody of said child or children shall not be able to pay for its or their education as provided in this section, and shall satisfy the school directors of that fact, such child or children shall be admitted free of cost.

SEC. 2. All time lost to any child or children in consequence of a school not being taught the required length of time, or from any other good reason, shall be made up the ensuing year or so soon as such disability is removed and a school is taught a sufficient time in their district to allow of such amend.

SEC. 3. In all cases where any person or persons having the custody of any child or children, shall fail to send said child or children to school the required length of time, provided that an

opportunity has offered and no good reason can be shown for the failure, then said person or persons shall pay to the school clerk of his or their school districts, on the presentation of a warrant from the school dirictors, the sum of one hundred dollars, to be collected the same as any special school tax, and to be incorporated into the school fund and used for school purposes in said school district; but the county commissioners shall have power to remit fines arising by virtue of this act when in their opinion justice demands a remission.

SEC. 4. All acts and parts of acts in any manner conflicting with any of the provisions of this act, be and the same are hereby repealed.

SEC. 5. This act to take effect from and after the first day of January, A. D. 1872.

Passed the House of Representatives November 22, 1871.

J. J. H. VAN BOKKELEN,
Speaker of the House of Representatives.

Passed the Council November 28, 1871.

H. A. SMITH,
President of the Council.

Approved November 29, 1871.

EDWARD S. SALOMON,
Governor of Washington Territory.

AN ACT

TO AMEND AN ACT ENTITLED "AN ACT IN RELATION TO ROADS, FERRIES, BRIDGES AND TRAVEL ON PUBLIC HIGHWAYS," APPROVED DECEMBER 2, 1869.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington,* That section fifteen of the act to which this is amendatory, be amended to read as follows:

TAB 04

LAWS

OF THE

TERRITORY OF WASHINGTON

ENACTED BY THE

LEGISLATIVE ASSEMBLY,

IN THE YEAR 1877.

Published by Authority.

OLYMPIA:
C. B. BAGLEY, PUBLIC PRINTER.
1877.

by paying to the owner of the tract upon which said dike is constructed one-half of the cost and expense of the construction thereof, and any person as[so] adopting the dike or ditch of another without contributing his half share of the cost or expense thereof shall be liable for his said half share, which may be recovered in a civil action in any court of competent jurisdiction, or the owner of the dike or ditch as [so] used, may secure a lien upon the tract of land bounded by said dike for the amount due for the use of said dike in accordance with the provisions of the law securing a lien to materialmen and mechanics: *Provided always*, That when such dike has become the common boundary of two adjacent tracts, it shall be and remain the common boundary, and the persons owning the said tracts shall be mutually liable for the expense of keeping it in repair, share and share alike.

SECTION 3. This act to take effect from and after its passage.

Approved, November 9th, 1877.

AN ACT

TO PROVIDE A SYSTEM OF COMMON SCHOOLS.

TITLE I.

SUPERINTENDENT OF COMMON SCHOOLS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That a superintendent of public instruction shall be appointed by the governor, by and with the advice and consent of the Legislative Council, and shall enter upon the duties of his office on or before the twentieth day after his appointment, and shall hold his office for the term of two years, or until his successor is appointed and qualified, and shall execute a bond in the penal sum of two thousand dollars, with two good and sufficient sureties, to be approved by the secretary of the Territory, conditioned upon the faithful discharge of his or her official duties.

SECTION 2. The superintendent shall have general supervision of public instruction, especially of the county and dis-

trict school officers and the public schools of the Territory, and shall report to the governor biennially, on or before the first day of October of the years in which the regular sessions of the Legislature are held. The governor shall transmit said report to the Legislature, and whenever it is ordered printed, a sufficient number of copies shall be delivered to the superintendent of public instruction to furnish two copies to be deposited in the Territorial library, and one copy to each county superintendent of common schools, to be held by him as public property, and delivered to his successor in office, and one copy to each local school officer within the Territory. Said report shall contain a statement of the condition of the Territorial university and public schools in the Territory, full statistical tables, by counties, showing among other statistics the number of school children in the Territory, the number attending public schools and the average attendance; the number attending private schools, the amount raised by county and district taxes or from other sources of revenue for school purposes, the amount expended for salaries of teachers and for building and furnishing school houses, and the statement of the plans for the management and improvement of schools.

SECTION 3. The superintendent of public instruction shall superintend the printing and transmitting of such blanks, forms, rules and regulations for the use and government of the public schools, school officers and teachers as the board of education may authorize.

SECTION 4. It shall be the duty of the superintendent of public instruction to travel in the different counties of the Territory where common schools are taught, so far as possible without neglecting his other official duties as superintendent of public instruction, during at least three months in each year, for the purpose of visiting schools, of consulting with county superintendents and addressing public assemblies on subjects pertaining to public schools.

SECTION 5. The superintendent of public instruction shall keep his office at some place where there is a post-office, and he shall receive a salary of six hundred dollars per annum, which shall be paid quarterly out of the Territorial treasury. He shall also submit, quarterly, a statement of expenditures for traveling expenses, stationery, postage and other necessary expenses connected with his office, which shall be audited by the Territorial auditor, who shall issue a warrant on the Territorial treasurer for the payment of such amounts as shall be found to have been properly incurred: *Provided*, That said expenditures shall not exceed three hundred dollars in any one year.

SECTION 6. The superintendent of public instruction shall, at least once a year, hold a Territorial teacher's institute, over

which he shall preside, at such time and place as may be determined upon, either by the institute or Territorial board of education, and he shall, so far as practicable, aid in establishing county institutes.

SECTION 7. The superintendent of public instruction shall be *ex-officio* President of the board of education.

SECTION 8. Before entering upon the discharge of the duties of his office the superintendent shall subscribe, before an officer duly authorized to administer oaths, the following:

I do solemnly swear (or affirm) that I will support the Constitution of the United States, the Organic Act of the Territory, and that I will faithfully discharge the duties of the office of Territorial superintendent of schools, according to law and the best of my knowledge and ability; so help me God.

Subscribed and sworn before me this——day of———— A. D. 187—.

Which being duly attested, shall be filed with the secretary of the Territory.

SECTION 9. The superintendent shall, at the expiration of his term of office, deliver over, on demand, to his successor, all property, books, documents, maps, records, reports and other papers belonging to his office, or which may have been received by him for the use of his office.

TITLE II.

BOARD OF EDUCATION.

SECTION 10. The governor shall oppoint, by and with the advice and consent of the Legislative Council, one suitable person from each judicial district, who, together with the Territorial suprintendent, shall constitute the Territorial board of education, who shall hold their offices for two years. They shall be notified of their appointment in the same manner as may be prescribed by law for giving notice to other Territorial officers, and within twenty days after receiving such notice, shall qualify by taking a similar oath to that which is required by this act to be administered to the superintendent of public instruction. They shall serve until their successors are appointed and qualified.

SECTION 11. The meetings of the board shall be held annually, at Olympia, on the first Monday of April.

SECTION 12. Said board shall have power:

First. To adopt a uniform series of text-books throughout the Territory whenever they can secure the exchange of the books now in use for new ones, without cost or expense to the people, and the series of text-books so adopted shall not be changed until the expiration of five years from their adoption, unless the publishers of such books shall, after such adoption, cause the prices thereof to be increased above the prices charged by other publishers for books of corresponding grades, or shall thereafter publish the books of the series adopted of an inferior quality, either in material, workmanship, or otherwise. Said board shall, before adopting any series of text-books, give notice that they will examine all text-books submitted to them, and said examination shall be by a public discussion of the merits of said books, in open board; and the series of books exhibiting the highest merit, shall be adopted as the series to be used in all the schools in this Territory, and notice of the time when such competition shall take place, shall be published in one paper of general circulation in each judicial district, for a period of six weeks prior to the date when such public competition shall occur.

Second. To prescribe rules for the general government of the public schools that shall secure regularity of attendance, prevent truancy, secure efficiency and promote the true interests of the schools; they shall prepare or cause to be prepared, blank forms for reports of teachers, directors, county superintendents and for other necessary purposes. The board shall have the general supervision of the Territorial Normal School whenever the same shall be established by law.

Third. To use a common seal.

Fourth. To order all printing that may be necessary to carry into effect the provisions of this act.

Fifth. To sit as a board of examination at their semi-annual meetings and grant Territorial certificates. A Territorial certificate shall entitle the holder to teach in any public school for the period of three years, subject to be revoked for cause. The fees charged for Territorial certificates shall be six dollars. The fees collected shall constitute a fund for paying the expenses of the board of education. The board of education may, at their discretion, grant, without examination, certificates to persons presenting authenticated diplomas, or certificates from other States, of the like grade and kind as those granted by the board of education for the Territory: *Provided*, They have been actually engaged in teaching, three years.

SECTION 13. It shall be the duty of the board of education to prepare, semi-annually, a uniform series of questions to be used by the county boards of examination in the examination of teachers.

SECTION 14. All certificates granted by the board of education may be revoked for immoral or unprofessional conduct.

SECTION 15. All needed stationery for the use of, and any printing authorized by the board, as well as all necessary traveling expenses of the members of the board incurred in going to or returning from the place of meeting, shall be paid out of the Territorial treasury, the accounts for the same to be presented by direction of the board, duly certified by the Territorial superintendent to the Territorial auditor, to be first audited and allowed by him and then certified to the Territorial treasurer for payment: *Provided*, The expenses of the whole board shall not exceed the sum of two hundred dollars.

SECTION 16. Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment.

TITLE III.

COUNTY SUPERINTENDENT.

SECTION 17. A county superintendent of common schools shall be elected in each county of the Territory at the general election preceding the expiration of the term of office of the present incumbent, and every two years thereafter, who shall take the office on the first Monday in January next succeeding his election, and hold for two years, or until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond to the county in a sum to be fixed by the board of county commissioners of said county. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election.

SECTION 18. The county superintendent shall, on or before the first Monday in September of each year, apportion all school moneys to the school districts in accordance with the provisions of this act. He shall certify to the several district clerks and to the county treasurer the amounts so apportioned to the several districts and the directors shall draw their warrants on the county treasurer in favor of persons entitled to receive the same. Such warrants shall show for what purpose the money is required, and no warrant shall be drawn unless there is money in the treasury to the credit of such district.

SECTION 19. County superintendents shall have the power and it shall be their duty.

First, To visit each school in his county at least once a year.

Second, To distribute, promptly, all reports, laws, forms, circulars and instructions which he may receive for the use of the schools and teachers from the superintendent of public instruction.

Third, To report to the superintendent of public instruction, annually, during the month of September, for the school year ending August thirty-first next receding[preceding,] such statistics as may be required of him.

Fourth, To enforce the course of study adopted by the board of education.

Fifth, To enforce the rules and regulations required in the examination of teachers.

Sixth, To keep on file and preserve in his office the biennial report of the superintendent of public instruction.

Seventh, To keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts.

Eighth, To carefully preserve all reports of school officers and teachers, and at the close of his term of office, deliver to his successor, all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor.

SECTION 20. If the county superintendent fails to make a full and correct report to the superintendent of public instruction, of all statements required to be made by law, he shall forfeit the sum of one hundred dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

SECTION 21. The county superintendent shall have power to administer oaths and affirmations to school directors, collectors, teachers and other persons, in all official matters connected with or relating to schools, but shall not make or collect any charge or fee for so doing.

SECTION 22. The county superintendent shall have the power, and it shall be his duty, to appoint directors and district clerk for any district which, from any cause, fails to elect at the regular time; to appoint directors and district clerk to fill vacancies, to appoint directors and district clerk for any new district: *Provided however*, That when a new district is organized, such of the directors and district clerks of the old district as

reside within the limits of the new one, shall be directors and district clerk of the new one, and the vacancies in the old district shall be filled by appointment; that the county superintendent shall have power to call a school meeting at the request of a majority of the legal voters, when in his opinion the interests of education require it: *Provided*, That said request for such school meeting be first laid before the directors of the district, and action thereon be refused by them.

SECTION 23. It shall be the duty of the county superintendent to inquire and ascertain whether the boundaries of school districts in his county are definitely and plainly described in the records of the county commissioners, and if such boundaries are not plainly described on such records, then it shall be his duty to furnish to said board of county commissioners accurate boundaries of all school districts, and he shall keep in his office a full and correct transcript of such boundaries. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and make a report of such actions to the county commissioners, and on being ratified by the county commissioners, the boundaries and descriptions so made shall be legal boundaries and descriptions of the district [districts] of the county. The county superintendent shall furnish the district clerks with descriptions of the boundaries of their respective districts.

SECTION 24. Every county school superintendent shall receive a salary of forty dollars per annum and when the number of scholars shall exceed five hundred (500) then he shall receive the sum of three dollars for each additional one hundred, and five dollars for each school visited during the year, together with the same mileage for going to and returning from said school that sheriffs receive in the county in which they reside, all to be paid quarterly out of the general treasury of said county in the same manner as the salaries of other county officers, upon his certifying to the county commissioners that he has actually discharged the duties required of him.

SECTION 25. Each county superintendent shall call to his assistance two persons holding the highest grade certificates in his county, and such persons with the county superintendent, shall constitute a board of examination for the examination of teachers. It shall be the duty of the county board of examination to be at the county seat on the first Wednesday of May and November for the purpose of examining teachers; the superintendent shall give ten days notice of the same by posting up hand bills or otherwise; the superintendent shall also at such time and place transact such other business as properly appertains to his office. And any person or district applying on different days for the transaction of such business shall pay

the superintendent a reasonable compensation for his trouble, not exceeding the sum of two dollars. A proper allowance shall be made out of the county treasury for the necessary books, stationery and postage of the county superintendent's office.

SECTION (Twenty) 26. There shall be three grades of county certificates, first, second and third. Unless revoked for cause, a first grade certificate shall entitle the holder to teach for three years; second grade for two years and third grade for one year. Those holding first grade county certificates, and who shall have been actually engaged in teaching for three years, shall be eligible to examination for first grade Territorial certificates: *Provided*, That the county superintendent may grant permits to such persons who may desire to teach in his county, who were not residents of the county, or who were unavoidably absent from the meeting of the county board of examination, and all permits so granted shall be good until the next meeting of the board.

TITLE IV.

SCHOOL DISTRICTS.

SECTION 27. For the purpose of organizing a new district, or for the subdivision of, or change in the boundaries of an old one, except as provided in section twenty-three, at least five heads of families must present a petition to the county superintendent, setting forth the boundaries of the new district asked for, or the change of the boundaries desired, with the reason for the same. The county superintendent shall, after giving due notice to all parties interested, transmit the petition to the board of county commissioners, with his approval or disapproval, and such changes in the boundaries as he may deem necessary or advisable. The commissioners shall establish the district as approved by the county superintendent: *Provided*, That by vote of the board they may establish the district in accordance with the original prayer of the petition, or such other modification as they may choose to make, or may reject it. In any case of alleged hardship, any head of a family, parent or guardian may make a statement of the facts to the board of commissioners, and if, in the judgment of the board, good cause be shown for such transfer, he may be transferred to another district.

SECTION 28. No new district formed by the subdivision of an old one shall be entitled to any share of the public money belonging to the old district until a school has been actually commenced in such new district; and unless within eight months from the action of the county commissioners a school is opened, the action making a new district shall be void, and all elections or appointments of directors made in consequence of such action, and all rights and office of the parties so elected or appointed, shall cease and determine; and all taxes which may have been levied in such old district, shall be valid and binding upon the real and personal property of the new district, and shall be collected and paid into the school fund of the district.

SECTION 29. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district, after the payment of all outstanding debts at the time when school was actually commenced in such new district, and the county superintendent shall divide and apportion such remaining moneys, and such as may afterwards be apportioned to the old district according to the number of census children resident in each district for which purpose he may order a census to be taken.

SECTION 30 Whenever a district is formed lying in two adjoining counties, the clerk of the district shall report to each county superintendent the number of children in the district residing in his county. In the same manner the directors and teachers shall make a distinct and separate report of all school statistics, and a teacher's certificate granted by the county superintendent of one county shall be valid for both.

SECTION 31. No school district shall be entitled to receive any apportionment of county school moneys unless the teachers employed in the schools of such district shall hold legal certificates of fitness for the occupation of teaching, in full force and effect.

SECTION 32. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained public school for at least three months during the preceding year: *Provided*, That any new district formed by the division of an old one, shall be entitled to its just share of school moneys where the time that school was maintained in the old district before division, and in the new one after division shall be equal to at least three months.

SECTION 33. Districts having less than fifteen scholars between the ages of four and twenty-one years, shall be exempted from the requirements of the preceding section, and may, by organizing and reporting to the superintendent according to law, draw their school money without being required to comply

with the provisions of the school law any further than the said organization, necessary report and regular enumeration of children are concerned; and in such district, two legal voters shall constitute a quorum to do business: *Provided*, That no warrant shall be drawn on the county treasurer for any money except for the payment of teachers, and if no school be kept in any such district during the period of two years, for at least three months, the money so apportioned to the district shall revert to the general school fund of the county.

TITLE V.

SCHOOL DIRECTORS.

SECTION 34. The board of directors of each school district shall have custody of all school property belonging to the district and shall have power in the name of the district, or in their own names, as directors of the district, to convey by deed all the interest of their district in or to any school house or lot directed to be sold by vote of the district, and all conveyances of real estate made to the district, or to the directors thereof, shall be made to the board of directors of the district and to their successors in office; said board in the name of the district, shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

SECTION 35. An annual school meeting for the election of school directors and district clerk shall be held in each district on the first Saturday in November of each year at the district school house if there be one, and if there be none, at a place to be designated by the board of directors. The directors shall post written or printed notices thereof, specifying the day, time, and place of meeting, in at least three public places in the district, one of which shall be the school house or other place of meeting at least six days previous to the time of meeting. All elections shall be by ballot and the directors shall have power to determine the hours in which the ballot box shall be kept open, having given due notice thereof in the posted notices of election. Every inhabitant male or female, over the age of twenty-one years, who shall have resided in the school district for three months immediately preceding any district meeting and who shall have paid or be liable to pay any tax except poll or road tax in said district, shall be a legal voter

at any school meeting and no other person shall be allowed to vote. Any person offering to vote may be challenged by any legally qualified elector of the district and the chairman of the board of directors shall thereupon administer to the person challenged an oath, in substance as follow: You do swear (or affirm) that you are a citizen of the United States or have declared your intention to become such; that you are twenty-one years of age, according to the best of your information and belief that you have resided in this district ninety days next preceding this election and that you are a taxable resident of this school district, exclusive of road or poll tax and that you have not before voted this day. If he shall refuse to take the oath his vote shall be rejected and any person guilty of illegal voting shall be punished as provided in the general election law of this Territory. The directors shall be the judges and inspectors of the election, and if they are not present at the time of opening the polls, then the electors present may appoint the officers of the election. A poll and tally list shall be kept by the clerk of the board of directors and with the exceptions mentioned in this section the election shall be conducted as far as practicable in the form and manner of the general election. Any on [one] of the old directors shall have power to administer to any director elect, the oath of office, and the clerk of the election shall issue the certificate of election to any director elect, who shall forward it with the oath attached or endorsed thereon, to the county superintendent of public schools.

SECTION 36. In all organized districts in which elections have been previously held one, director shall be elected for the term of three years, and if any vacancies are to be filled, a sufficient number to fill them for the unexpired term and the ballot shall specify the respective terms for which each director is to be elected. In new districts acting under directors appointed by the county superintendent three directors shall be elected for one two and three years respectively. Directors elect shall take office immediately after qualifying and shall hold office until their successors are elected and qualified. Any director elect who shall fail to qualify within ten days after being elected. shall forfeit all right to the office, and the county superintendent shall appoint to fill the vacancy.

SECTION 37. Whenever a new district is formed by order of the board of county commissioners, within thirty days thereafter, a special school meeting may be called by notice of any three legal voters of said district, and such meeting shall be conducted in a manner and form prescribed in this act, for the annual school meeting for the election of directors. Such new district shall be considered organized whenever two of the directors shall have qualified, and the record of the district clerk

shall be *prima facie* evidence of the legal organization of the district, and the district shall be designated by number.

SECTION 38. Every board of directors unless otherwise specially provided by law, shall have power and it shall be their duty:

First, To employ and for sufficient cause dismiss, teachers, mechanics, and laborers; and to fix, alter, allow, and order paid their salaries and compensation.

Second, To enforce the rules and general regulations of the Territorial board of education for the government of schools, pupils, and teachers, and to enforce the course of studies adopted by the board of education.

Third, To provide and pay for school furniture and apparatus and such other articles—materials and supplies—as may be necessary for the use of the school or for the use of the school board.

Fourth, To suspend or expel pupils from school, and in cities or towns to exclude from school all pupils under six years of age, when the interest of the school require such exclusion.

Fifth, To rent, repair and furnish school houses.

Sixth, To build or remove school houses, purchase and sell school lots when the directors are directed by a vote of the district so to do.

Seventh, To purchase personal property, and to receive, lease and hold in fee, or in trust for their district any or all real or personal property, for the benefit of the school thereof.

Eighth, To provide books for the indigent children, on the written statement of the teacher that the parents of such children are unable to purchase them.

Ninth, To require all pupils to be furnished with such books as may have been adopted by the Territorial board of education as a condition to membership to the school.

Tenth, To exclude from school and from school libraries, all books, papers, tracts, or catechisms of an infidel, sectarian or partisan character.

Eleventh, To require every teacher to keep a school register.

Twelfth, To require teachers to make an annual report as may be required by the superintendent of public instruction.

Thirteenth, To make an annual report during the month of August of each year for the school year next preceding, to the county superintendent in the manner and form and on the blanks prescribed by the board of education.

Fourteenth, To make a report whenever required, directly

to the Territorial superintendent of public instruction of the text books used in their schools.

SECTION 39. Any board of directors, shall be liable as directors, in the name of the district, for any judgment against the district, for any salary due any teacher, and for any debts legally due, contracted under the provisions of this act and they shall pay such judgment or liability out of the school funds only, to the credit of the district.

SECTION 40. Any board of directors shall have power to make arrangements with the directors of any adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school money due by apportionment to such children to the district in which they may attend school.

TITLE VI.

SCHOOL CLERKS.

SECTION 41. It shall be the duty of the district clerk to record all proceedings of the annual meetings, or of special school meetings, and to keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors; and such record must always be open for public inspection.

SECTION 42. It shall be the duty of the district clerk to take annually between the twentieth and thirtieth of July, of each year, an exact census of all children and youth between the ages of four and twenty-one years of age, residing in the district, and shall specify the number and sex of such children and the names of their parents or guardians. He shall state specifically and separately a census of all children under four years of age, and shall specify the number and sex of such children; but all children who may be absent from home, attending boarding schools or any public or private schools or seminaries of learning shall not be included by the school district clerk in the census list of the city, town or district where they may be attending such private institutions of learning. He shall make a full report thereof on blanks furnished for that purpose, under oath, to the county superintendent, on or before the first day of August thereafter, and deliver a copy to

the school directors. The directors shall make a reasonable allowance to the clerk of the district for the services rendered by him in accordance with the provisions of this act, and order the same paid out of the district school fund.

SECTION 43. The district clerk of each district shall provide all school supplies authorized by this act, and shall keep the school house in repair, and shall keep an accurate record of all expenses incurred by him on account of the school, which account shall be audited by a majority of the board of directors, and paid out of the district school fund.

SECTION 44. It shall be the duty of every district clerk to report to the county superintendent at the beginning of each term, the name of the teacher and the proposed length of the term.

TITLE VII.

DISTRICT MEETINGS.

SECTION 45. No district school meeting, annual or special, shall be organized before nine o'clock A. M., or close before twelve o'clock M., or be kept open less than one hour, and in all districts where the number of youths and children, between four and twenty-one years of age, equals or exceeds three hundred, the polls shall be kept open from two o'clock P. M. till six o'clock P. M.

TITLE VIII.

TEACHERS.

SECTION 46. Every teacher employed in any public school shall make an annual report to the county superintendent, on or before the first day of September after the close of each school year in the form and manner and on the blanks prescribed by the board of education. A duplicate of said report shall be furnished to the district clerk. Any teacher who shall end any school term before the close of the school year, shall make a report to the county superintendent immediately after the close

of such term; and any teacher who may be teaching any school at the close of the school year shall, in his or her annual report, include all statistics from the school register for the entire school year, notwithstanding any previous report for a part of the year. Teachers shall make such additional reports as may be required, in pursuance of the law, by the board of education. No board of directors shall draw any order or warrant, for the salary of any teacher for the last month of his or her services, until the reports herein required shall have been made and received.

SECTION 47. Every teacher shall keep a school register, in the manner provided therefor, and no board of directors shall draw any warrant for the salary of any teacher for the last month of his or her services in school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and statistics entered, or until by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and the regulations prescribed by law; and if any teacher shall willfully refuse, or neglect to comply with such requisitions, then the board of directors shall be authorized to withhold any warrant for salary due, until such teacher shall comply therewith. No teacher shall be entitled to draw for salary on school moneys unless such teacher shall be employed by a majority of the directors, nor unless the holder of a legal teacher's certificate or permit in full force and effect.

SECTION 48. In every contract whether written or verbal, between any teacher and board of directors, a school month shall be construed to be twenty school days or four weeks of five days each, and no teacher shall be required to teach school on Saturdays, the first day of January, Christmas day, the Fourth of July, or any other legal holiday, and no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught, [nor shall] any deduction be made from the salary of a teacher during the time he or she is attending the annual county teacher's institute, including time necessarily occupied in traveling, upon production of the certificate of the president of such institute certifying to the number of days of such [attendance.] Any contract made in violation of the provisions this section shall have no force or effect, as against the teacher.

SECTION 49. Every teacher shall have power to hold every pupil to a strict accountability in school, for any disorderly conduct on the way to or from school or on the grounds of the school, or during intermission or recess; to suspend from school

any pupil for good cause, provided that such suspension shall be reported to the directors as soon as practicable, and their decision shall be final, and no teacher shall administer any punishment on or about the head of any scholar.

SECTION 50. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice and patriotism; to teach them to avoid idleness, profanity and falsehood, and to instruct them in the principles of a free government, and to train them up to a true comprehension of the rights, duties and dignity of American citizenship.

TITLE IX.

SCHOOLS.

SECTION 51. Every school, not otherwise provided for by special law, shall be open for the admission of all between the age of five twenty-one years, residing in that school district, and the board of directors shall have power to admit adults and children not residing in the district, whenever good reason exists for such exception.

SECTION 52. All schools shall be taught in the English language, and instruction shall be given in the following branches, viz: reading, writing, orthography, arithmetic, geography, English grammar, physiology and history of the United States, and such other studies as may be authorized by the directors of the district. Attention shall be given during the entire course, to the cultivation of manners, morals, to the laws of health, physical exercises, ventilation and temperature of the school room.

SECTION 53. No books, tracts, papers, catechism or other publications of a partisan, denominational character shall be used or distributed in any school, neither shall any political, sectarian, denominational or infidel doctrine be taught therein; and any teacher who shall violate these provisions shall forfeit his permit or certificate for the period of one year.

SECTION 54. The school day shall be six hours in length exclusive of any intermission at noon, but any board of directors may fix as the school day, a less number of hours than six: *Provided*, That it be not less than four, for any primary school under their charge, and any teacher may dismiss any or all scholars under eight years of age, after an attendance of four

hours a day, exclusive of an intermission at noon. No teacher or scholar shall be allowed to attend school from any house in which smallpox, vari[o]loid or scarlet fever is prevalent. No teacher or scholar shall be permitted to return to school from any house where the above mentioned diseases have prevailed until three weeks shall have elapsed from the beginning of convalesence of the patient. In case several individuals have been affected with such disease within the same house the period of time must be reckoned from the beginning of convalescence of the last case. No teacher or scholar shall be allowed to attend school who is affected with dip[h]theria or measles, or whooping cough.

SECTION 55. All pupils who may attend public schools shall comply with the regulations established, in pursuance of the law, for the government of such schools, shall pursue the required course of study, and shall submit to the authority of the teachers, of such schools. Continued and willful disobedience, and open defiance of authority of the teachers, shall constitute good cause for expulsion from school. Any person who shall in any way cut, deface, or otherwise injure any school house, furniture, fence, or out building thereof, shall be liable to suspension and punishment, and the parents or guardian of such pupil shall be liable for damage on complaint of the teacher or any director.

SECTION 56. The school year shall begin on the first day of September and end on the last day of August.

TITLE X.

SUPPORT OF SCHOOLS.

SECTION 57. The principal of all moneys accruing to the Territory from the sale of any lands, which have been, or which may hereafter be given by the congress of the United States for school purposes, shall constitute an irreducible fund, the interest accruing from which shall be annually divided among all the school districts in the Territory, proportionally to the number of children in each between the ages of four and twenty-one years, for the support of common schools and for no other purpose whatever.

SECTION 58. For the purpose of establishing and maintaining public schools, it shall be the duty of county commissioners of each county to levy an annual tax not less than three

and not more than six mills on the dollar on all taxable property within their respective counties, as shown by the assessment roll made by the county assessor for the same year, and to include the same in their warrant to the collector, and the said collector shall proceed to collect said tax in the same manner as the other taxes are collected, and the said money so collected shall be paid over to the county treasurer, to be drawn in the manner prescribed in this act. It shall not be lawful for any county treasurer to receive county orders in payment of school tax, nor to pay out any school money or [on] county orders. For the support of common schools, there shall be set apart by the county treasurer, all moneys paid into the county treasury arising from fines for a breach of any law regulating license for the sale of intoxicating liquors, or for keeping of bowling alleys, or billiard saloons, or of any penal laws of the Territory. Such moneys shall be forthwith paid into the county treasury by the officer receiving the same, and be added to the yearly school fund raised by tax in each county, and divided in the same manner.

SECTION 59. It shall be the duty of the auditors of the several counties of the Territory to make a report to the county superintendent of common schools within the counties, the first Monday in August of each year, of the school tax levied, and the assessed valuation of their counties for that year, and it shall be the duty of the clerk of the district court at the close of every term thereof, to report to the county superintendent of the county in which said term, shall have been holden, whether or not any fines, and if any, what, with the date at which the same were paid to the county treasurer, and all officers mentioned in this act, who shall fail or neglect to perform any of the duties required by this act, shall be deemed guilty of misdemeanor, and upon conviction before any court having competent jurisdiction, shall be fined in any sum not less than twenty dollars and not more than one hundred dollars for each neglect, and such fine shall be paid into the county treasury for the benefit of common schools in said county.

TITLE XI.

UNION OR GRADED SCHOOLS.

SECTION 60. Whenever the inhabitants of two or more school districts may wish to unite for the purpose of establishing a graded school, in which instruction shall be given in the

higher branches of education, the clerks of the said districts shall upon a written application of five voters of their respective districts, call a meeting of the voters of such districts at some convenient place by posting up written notices, in like manner as provided for calling district meetings, and if a majority of the voters of each [of] such districts shall vote to unite for the purpose herein stated, they shall at that meeting, or at an adjourned meeting, elect three directors and a clerk for such a union district.

SECTION 61. The board of directors provided for in the preceding section shall, in all matters relating to graded schools possess all the power, discharge all the duties, and be governed by the laws herein provided for district directors.

SECTION 62. The union district thus formed shall be entitled to an equitable share of the county school fund, to be drawn from the county treasury in proportion to the number of children attending such graded school for each district.

SECTION 63. The said union district may levy taxes for the purpose of purchasing or furnishing proper buildings for the accommodation of the school, or for the purpose of defraying necessary expenses and paying teachers, but shall be governed in all respects by the law herein provided for levying and collecting district taxes.

SECTION 64. The clerk of the union district shall discharge all the duties of clerk in like manner as a clerk of a common school district, and shall report to the county superintendent the number of scholars attending the graded school, from his district their sex and the branches studied, and the county superintendent shall apportion the amount of school money due the union district.

SECTION 65. Any single district shall possess power to establish graded schools, subject to the provisions of this act, in like manner as two or more districts united.

SECTION 66. The annual meeting of union, or graded, school districts shall be held on the last Saturday of October, at such hour as may be indicated by the board of directors.

TITLE XII.

SCHOOLS IN CITIES OR TOWNS.

SECTION 67. The public schools of any city, town or village which may be regulated by any special law, set forth in

the charter of such city, town or village, shall be entitled to receive their proportion of the public money: *Provided*, That the clerk of the board of education in such city, town or village, shall make due report, within the time and manner prescribed in this act to the county superintendent.

SECTION 68. Any city, town, village or district reporting more than five hundred (500) children between four and twenty-one years of age shall be, and is required by this act to establish graded schools, under such rules and regulations as may be prescribed by the board of education.

SECTION 69. In any city, town or village containing more than four hundred inhabitants every parent, guardian or other person residing therein having control or charge of any child or children between the ages of eight and sixteen, shall be required to send any such child, or children to public school, for a period of at least six months in each school year, at least six weeks of which shall be consecutive, unless the bodily or mental condition of such child or children has been such as to prevent his or their attendance at school or application to study for the period required, or unless he or they are engaged in labor necessary for their own support, or that of others depending on them, or unless such child or children are taught in a private school, in such branches as are usually taught in primary schools, or have already acquired the ordinary branches of learning taught in the public schools.

TITLE XIII.

SCHOOL OFFICERS.

SECTION 70. When any school officer is superseded by election, or otherwise, he shall immediately deliver to his successor in office, all books, papers, and moneys pertaining to his office, and every such officer who shall refuse to do so, or who shall willfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply any moneys intrusted to him by virtue of his office, shall be deemed guilty of a misdemeanor and shall be punished by a fine, in the discretion of the court, not to exceed one hundred dollars.

SECTION 71. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath to support the constitution of the United States, the organic act of the Territory, and to promote the interests of education and faithfully dis-

charge the duties of his office according to the best of his abilities. In case such officer has a written appointment, or commission, his oath shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths appertaining to their respective offices without charge or fee.

SECTION 72. No school director or other school officer shall be directly or indirectly, interested in any contract that may be made by a board of which he is a member, and any contract made in violation of this provision shall be null and void.

SECTION 73. All fines and penalties not otherwise provided for in this act shall be collected by an action in any court of competent jurisdiction, and shall be paid into the county school fund immediately after collection.

SECTION 74. Any parent, guardian, or other person, who shall upbraid, insult, or abuse any teacher in the presence of the school, shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten dollars nor more than one hundred dollars.

SECTION 75. Any person who shall willfully disturb any public school, or any public school meeting shall be deemed guilty of a misdemeanor and liable to a fine of not less than ten nor more than one hundred dollars.

SECTION 76. In case any district clerk shall fail to take the census provided for in this act, at the proper time, and if through such neglect, the district shall fail to receive its apportionment of school moneys, said district clerk shall be individually liable to the district for the full amount so lost, and it may be recovered in a suit brought by any citizen of such district, in the name of and for the benefit of such district.

SECTION 77. All cases of disputes in relation to school matters, not properly belonging to courts of justice may be referred first to the county school superintendent, and appealed to the Territorial superintendent, whose decision shall be final.

TITLE XIV.

TEACHERS' INSTITUTES.

SECTION 78. Each county superintendent of the common schools in this Territory [of any county] containing ten or more

organized districts shall hold annually a teacher's institute at such time as may be agreed upon between him and the Territorial superintendent, and such institute shall continue in session not less than one nor more than five days. He shall give at least ten days' notice of the time and place of holding such institute by publication in some newspaper published in the county. If there be no paper published in the county, then by posting notices in three public places.

SECTION 79. It shall be the duty of all teachers in the county to attend such institute, and participate in the exercises thereof; and all teachers who may have charge of schools at the time of holding the institute shall adjourn their schools for the time during which the institute shall be held.

SECTION 80. Each county superintendent shall have authority to appoint a deputy for the purpose of examining teachers in remote districts.

TITLE XV.

SPECIAL TAXES.

SECTION 81. The board of directors of any district may, when in their judgment it is advisable, submit to the qualified school electors of the district the question whether a tax shall be raised to furnish additional school facilities for said district, or to maintain any school or schools in such district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes: *Provided*, Such election shall be called by posting notices in three public places in the district for at least twenty days, said meeting to be held on or before the first Monday of July in each year; said notices shall contain the time and place of holding the election, the amount of money proposed to be raised, and the purpose or purposes for which it is intended to be used. The directors shall act as judges to conduct the election, and it shall be in all other respects, as nearly as practicable, in conformity with the general election law. At such elections the ballots shall contain the words "tax, yes" or "tax, no." If the majority of the votes cast are "tax, yes," the officers of the election shall certify the fact to the district clerk, who shall, at once proceed to copy from the last assessment roll of the county

assessor the list of property liable to taxation, situated in or owned by residents of the district, and shall deliver the same to the board of directors, who may allow him a reasonable compensation therefor out of the proceeds of said tax; said compensation not to be more than four dollars per day. The directors shall upon receiving the roll, deduct ten per centum therefrom for anticipated delinquencies, and then dividing the sum voted, together with the estimated cost of assessing and collecting added thereto, by the remainder of the roll, ascertain the rate per cent. required, and the rate so ascertained (using the full per cent. on each one hundred dollars instead of the fraction) shall be, and is hereby, levied and assessed to, on or against the persons or property named or described in said roll, and it shall be a lien on all such property until the tax is paid, and the said tax, if not paid within the time limited by the next section for its payment, shall be recovered by suit in the same manner and with the same costs as delinquent Territorial and county taxes. The directors upon receiving any assessment roll from the district clerk, shall give five days' notice thereof, by posting notices thereof in three public places in the district, and shall sit for at least one day as a board of equalization, at such time and place as shall have been name[d] in said printed notices, and they shall have the same power as county boards of equalization to make any change in said assessment roll: *Provided*, That there shall be but one tax levied in each year, under this section, and that (that) the tax so levied shall not exceed ten mills on the dollar: *Provided further*, That not more than two meetings shall be held in any one year under the provisions of this section.

SECTION 82. As soon as the rate of taxation has been determined, as provided in the last preceding section, the directors shall certify the same to the county auditor, who shall extend the same upon the general assessment roll of the county and certify the same to the county treasurer, who shall proceed to collect the tax in the same manner and at the same time, and with the same power and authority to enforce payment of the same as in the case of county and Territorial taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs, and shall receive, as compensation for collecting the same, such sum, not more than two per cent. of the tax collected, as may be allowed by the county commissioners, such compensation to be paid from the amount of said district tax so collected.

SECTION 83. All school moneys apportioned by county superintendents of common schools shall be apportioned to the several districts in proportion to the number of school children between four and twenty-one years of age, as shown by the returns of the district clerk for the preceding year: *Provided*,

That Indian children, who are not living under the guardianship of white persons, or American citizens, shall not be included in the apportionment list, excepting those whose parents have severed their tribal relations or own real estate in the distsict subject to taxation.

SECTION 84. County school money may be used by the county superintendent and directors for various purposes authorized and provided in this act, and for no other purpose.

TITLE XVI.

COUNTY TREASURER.

SECTION 85. It shall be the duty of the county treasurer of each county,

First. To receive and hold all school moneys, as a special deposit, and to keep a separate account of their disbursement to the school districts which shall be entitled to receive them, according to the apportionment of the county superintendent of common schools.

Second. To notify the county superintendent of common schools of the amount of county school fund in the county treasury whenever required, and to inform said superintendent of the amount of school money belonging to any other fund subject to apportionment.

Third. To pay the amount of the county school tax levied, and such other moneys paid into the school fund on the warrants of the directors whenever such warrants are countersigned by the district clerk, and properly endorsed by the holders.

Fourth. To make, annually, on the first of September of each year, a financial report for the last preceding school and fiscal year ending with August thirty-first, to the county superintendent of common schools in such form as may be required by law.

TITLE XVII.

MISCELLANEOUS.

SECTION 86. Whenever the word he or his occurs in this

act, referring to either superintendents, directors, or teachers, it shall be understood to mean also she or her.

SECTION 87. Any series of text books adopted by the board of education shall remain in use not less than five years.

SECTION 88. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment which shall have an injurious effect upon the health of said pupil, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars.

SECTION 89. All applicants for certificates shall be examined in reading, writing, orthography, arithmetic, geography, English grammar, physiology, history of the United States, constitution of the United States, school law of the Territory and theory and practice of teaching.

SECTION 90. This act shall be known as the Washington school law, and no other title or reference shall be necessary.

SECTION 91. All acts and parts of acts upon any subject matter contained in this act, shall be, and the same are hereby repealed.

SECTION 92. This act shall be in force from and after the 31st day of December, one thousand eight hundred and seventy-seven.

Approved, November 9th, 1877.

AN ACT

AUTHORIZING THE GOVERNOR OF THE TERRITORY TO OFFER A STANDING REWARD FOR THE ARREST OF CERTAIN CLASSES OF CRIMINALS.

SECTION 1. *Be it enacted by the Legislative Assembly of the Territory of Washington*, That the Governor shall offer a standing reward of two hundred dollars ($200,) for the arrest of each person who shall place any obstruction on any railroad track or who shall misplace any switch rail, or ties on any such road, whereby the life of any person passing over said road may

TAB 05

LAWS

OF

WASHINGTON TERRITORY,

ENACTED BY THE

LEGISLATIVE ASSEMBLY,

TENTH BIENNIAL SESSION,

1885-6.

Printed by Authority.

OLYMPIA:
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1886.

own use in any way whatever or use by way of investment in any kind of property, or loan without the authority of law, any portion of the public money intrusted to him for safe keeping, transfer or disbursement, or unlawfully convert to his own use any money that may come into his hands by virtue of his office, shall be deemed guilty of embezzlement to the amount of so much of said money as is thus taken, converted, invested, used, loaned or unaccounted for, and upon conviction thereof he shall be imprisoned in the penitentiary not exceeding five years and fined a sum equal to the amount of money embezzled, and, moreover, is forever after disqualified from holding any office under the laws of this territory.

SEC. 12. All acts and parts of acts in any manner conflicting with any of the provisions of this act be, and the same are hereby repealed.

SEC. 13. This act shall take effect and be in force from and after its passage and approval by the governor.

Approved January 20, 1886.

AN ACT

TO ESTABLISH A SCHOOL FOR THE DEAF, MUTE, BLIND AND FEEBLE-MINDED YOUTH OF WASHINGTON TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Washington:

SECTION 1. That a territorial school be, and hereby is established, to be known as "The Washington School for Defective Youth," for the education of the deaf, blind and feeble-minded youth of Washington Territory.

SEC. 2. Said school shall be free to all resident youth in Washington Territory, who are too deaf, blind or feeble minded to be taught by ordinary methods, in other public schools: *Provided*, They are free from vicious habits and from loathsome or contagious diseases.

SEC. 3. The location of said school shall be at Vancouver, in Clarke county.

SEC. 4. Immediately after the passage and approval of this act, three commissioners shall be appointed by the governor,

whose duty it shall be, within thirty days from the date of their appointment to select a suitable site and report their action to the governor.

SEC. 5. Said school shall be under the management of a board of trustees, consisting of five persons of good repute and learning, being citizens of the territory, nominated by the governor, on or before the seventh day of February, 1886, and confirmed by the council, to hold office for the terms hereinafter specified in section 6.

SEC. 6. Two of said trustees shall be appointed to serve until the thirtieth (30) day of June, 1888; two to serve until the thirtieth day of June, 1890, and one to serve until the thirtieth day of June, 1892, and until their successors shall be appointed and confirmed, subject, however, to removal by the governor at any time for good and sufficient cause.

SEC. 7. After organization, as hereinafter provided, said board of trustees, and their successors shall have the management of real and personal property, funds, financial business, and all general and public interests of the school, with power to receive, hold, manage, dispose of, and convey any, and all, real and personal property, made over to them by purchase, gift, devise or bequest, and the proceeds, and interest thereof, for the use and benefit of the school.

SEC. 8. On the fifteenth day of February, 1886, the trustees shall meet at a place to be named by the governor in the official notification of their appointment, and they shall then and there, proceed to elect by ballot, from their own number, a secretary *pro tem*, for that meeting, a president, a vice president and a treasurer, each to serve until the thirtieth day of June, 1887; an executive committee of three members, one to serve until the thirtieth day of June, 1887; one to serve until the thirtieth day of June, 1888, and one to serve until the thirtieth day of June 1889; an auditor, not of their own number, to serve until the thirtieth day of June, 1887, and a director of the school, not of their own number, who shall be *ex officio* an honorary member of the board of trustees, without the right to vote, and shall act as secretary of the board, with custody of its records, for the keeping of which suitable books shall be provided.

SEC. 9. The treasurer of the board of trustees shall, within thirty days from the date of his election, file with the secretary of Washington Territory, a duly executed and approved bond, in the sum of five thousand dollars ($5,000,) for the faithful performance of his duties as treasurer, during his term of office.

SEC. 10. The board of trustees shall, at the time of the

first meeting above provided for, adopt suitable by-laws for its own government in the transaction of business.

SEC. 11. Vacancies in the board of trustees, occurring biennially by the expiration of the term or terms of a member or members, shall be filled by nomination by the governor, at least five days before the adjournment of the legislative assembly, of a trustee or trustees to be confirmed by the council, to serve for six years from the first day of July following the date of his or their confirmation, and until his or their successor or successors shall be appointed and confirmed.

SEC. 12. Vacancies in the board of trustees, caused by the death, resignation, departure from Washington Territory, or removal for cause, of a member of the board, shall be filled for the unexpired balance of term, by the appointment of a trustee, by the governor, which appointment shall at the session of the legislative assembly held next thereafter, be submitted to the council for confirmation.

SEC. 13. All appointments shall be such that the board shall always contain at least one practical educator, one physician and one lawyer.

SEC. 14. Official notice of appointment shall be given to each trustee, by the secretary of the territory, within ten days from the date of the confirmation of said trustees by the council.

SEC. 15. After the first meeting of the board of trustees, as hereinbefore provided, the regular annual meeting shall be held at the school, on the last Wednesday of May, in each year, at which meeting a president, a vice president and a treasurer shall be elected, by ballot, from the board, and an auditor, not of the board, each to serve one year from the first day of July following; and one member of the executive committee, to serve three years from the first day of July following, and any other business, proper to come before said meeting, may be transacted.

SEC. 16. Special meetings of the board of trustees may be held at any time, on request of the executive committee, and shall be held on the written request of any three trustees. The official notification of each special meeting shall state the business to be transacted at said meeting, and no business other than that so stated, shall be brought before said meeting.

SEC. 17. Three members of the board of trustees shall constitute a quorum for the transaction of business.

SEC. 18. Official notice of each meeting of the board of trustees shall be issued by the secretary to each trustee, at least fifteen days before the date of such meeting.

SEC. 19. The executive committee shall meet at the school on the last Wednesdays of August, November, Febru-

ary and May, in each school year, and at other times as often as may be necessary for the proper performance of their duties.

SEC. 20. The executive committee shall, on their visits to the school, inspect the real and personal property of the school, shall purchase all supplies in the manner authorized in section 2269 of the Code of Washington Territory, relating to the purchase of supplies for the hospital for the insane, shall examine the accounts, bills and vouchers, draw orders on the treasurer of the board, for the payment of bills approved, and at suitable times, submit the accounts to the inspection of the auditor.

SEC. 21. No trustee shall, during his term of office have any direct or indirect personal interest in any contract, agreement or indebtedness on account of the school in any way.

SEC. 22. The financial and official year of the school shall begin on the first day of July, and end on the thirtieth day of June following. After the thirtieth day of June, 1886, all financial business, contracts and official terms shall conform thereto.

SEC. 23. The regular term of school shall begin on the last Wednesday of August in each year, and end on the last Wednesday of May following.

SEC. 24. At each regular assembly of the legislature of Washington Territory, the board of trustees shall present to the governor, for transmission to the legislature, a full report of the operations of the school during the previous two school years, showing the amount, condition and value of all real and personal property of the school, receipts and expenditures of money, number of persons employed, and amount of salary paid to each, and the number of pupils in attendance.

SEC. 25. The director of the school shall be a competent expert educator of defective youth; a hearing man of sound learning and morals, not under thirty nor over seventy years of age; practically acquainted with the school management and class instruction of the deaf, blind and feeble-minded. He shall reside in the school and be furnished quarters, heat, light and food.

SEC. 26. The director shall be responsible for the care of the premises and property of the school, selection and control of employes, regulation of the household, discipline of the school, arrangement and execution of a proper course of study, training of the pupils in morals and manners, and the general oversight of all internal affairs of the school, and shall lay before the regular annual meeting of the board of trus-

tees, on the last Wednesday of May in each year, a full report of the operation of the school during the previous school year.

SEC. 27. The salary of the director shall be nine hundred dollars for the first year of his service in the school, with an increase of not more than one hundred dollars per annum, up to a maximum salary of fifteen hundred dollars per annum, and no more. He shall have no other occupation during his term of service in the school.

SEC. 28. The director may be removed at any time by a three-fifths vote of the full board of trustees, on proof of incompetency, mismanagement, inefficiency or immorality.

SEC. 29. No unemployed person, other than pupils, shall be permitted to reside on the school premises, except members of the director's family, for whom the sum of one hundred dollars ($100) per annum shall be paid by the director to the treasurer of the board of trustees, for the board and lodging of each such unemployed person over twelve years of age.

SEC. 30. The parent, guardian or next friend of any defective youth, residing in Washington Territory, desiring the admission of such youth to the school, shall, at least ten days before the last Wednesday in February and August of each year, furnish to the secretary of the board of trustees, in writing, full and satisfactory information concerning such youth. The board of trustees shall have the power to expel any pupil from the school for good cause shown.

SEC. 31. If the parent, guardian or next friend of any defective youth, residing in Washington Territory, is, by reason of poverty, unable to pay the cost of transporting such youth to and from the school and maintenance therein, then, on satisfactory proof of such inability being presented to the judge of the probate court in the county where such youth resides, said judge shall issue to such parent, guardian or next friend, a certificate authorizing the admission of such youth to the school at the expense of that county, on condition of compliance with the provisions of section thirty (30), which certificate shall be filed with the secretary of the board of trustees, and shall be deemed sufficient warrant for the payment, by the treasurer of the aforesaid county, of all duly certified and audited bills presented to him by the secretary of the board of trustees on account of the transportation of such

youth, said bills not to exceed the actual cost of transportation over the usually traveled routes for each of said youth.

SEC. 32. Defective youth not residing in the territory, shall be admitted on such terms and conditions as may be prescribed by the board of trustees.

SEC. 33. The sum of seven thousand five hundred dollars ($7500) is hereby appropriated from any money in the treasury of Washington Territory not otherwise appropriated, to pay the expenses of the school from the first day of January, 1886, to the thirtieth day of June, 1888, the same to be paid to the treasurer of the board of trustees, in equal installments, on the first day of April, July and October in 1886; January, April, July and October in 1887, and January and April in 1888.

SEC. 34. All former acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

SEC. 35. This act shall take effect and be in force from and after its passage and approval by the governor.

Approved February 3, 1886.

AN ACT

TO PROVIDE FOR THE PERMANENT LOCATION AND CONSTRUCTION OF A HOSPITAL FOR THE INSANE AT FORT STEILACOOM IN WASHINGTON TERRITORY.

Be it enacted by the Legislative Assembly of the Territory of Washington:

SECTION 1. That a hospital for the insane in Washington Territory shall be, and hereby is, permanently located and established at Fort Steilacoom in Pierce county.

SEC. 2. That the board of trustees of the hospital for the insane shall, in addition to their other duties, constitute a board of commissioners for the construction of said hospital for the insane, under the provisions of this act: *Provided*, That the governor shall have power to remove any member of said commission for good and sufficient cause.

SEC. 3. That each of said commissioners, before entering upon the duties of his office, shall take and subscribe an

TAB 06

SESSION LAWS

OF THE

STATE OF WASHINGTON,

ENACTED BY THE

FIRST STATE LEGISLATURE,

SESSION OF 1889-90.

[COMPILED IN CHAPTERS, WITH MARGINAL NOTES AND INDEX, BY ALLEN WEIR, SECRETARY OF STATE.]

PUBLISHED BY AUTHORITY.

OLYMPIA, WASH.:
O. C. WHITE, STATE PRINTER.
1890.

CHAPTER XII.—EDUCATIONAL.

SCHOOLS AND SCHOOL DISTRICTS.

AN ACT to establish a general uniform system of Common Schools in the State of Washington, and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

TITLE I.—OUTLINE OF SYSTEM.

SECTION 1. A system of common schools shall be maintained throughout the State of Washington.

SEC. 2. The administration of the common school system shall be entrusted to the state superintendent of public instruction, a state board of education, county superintendents of common schools, boards of directors, and a district clerk for each district.

TITLE II.—SUPERINTENDENT OF PUBLIC INSTRUCTION.

State superintendent of public instruction.

SEC. 3. The superintendent of public instruction shall be elected by the qualified electors of the state on the first Tuesday after the first Monday in November of the years in which state officers are elected, and shall hold his office for the term of four years, and until his successor is elected and qualified, and his powers and duties shall be as hereinafter enumerated: *First*, he shall have supervision over all matters pertaining to the common schools of the state. He shall receive an annual salary of twenty-five hundred dollars, payable quarterly upon warrant of the state auditor drawn upon the state treasurer in the same manner as other state officers are paid. *Second*, he shall report to the governor biennially on or before the first day of November preceding the regular session of the legislature. The governor shall transmit said report to the legislature, and three thousand copies thereof shall be printed and delivered to the superintendent of public in-

Biennial report of superintendent.

struction, who shall furnish two copies to be deposited in the state library, one copy to each county superintendent of schools, to be held by him as public property and delivered to his successor in office, and one copy to each district clerk within the state, for the district library. Said report shall contain a statement of the general condition of the common schools of the state, with full statistical tables, by counties, showing the number of schools and the attendance; the state and county school fund apportioned, amount received by special tax or from other sources, amount expended for salaries of teachers, the salaries paid by the several counties to the superintendent of schools, the amount they are paid for visiting schools, and the mileage they draw for same; building and providing school houses, the amount of bonded or other school indebtedness, with rate of interest paid; a list of the school officers of the state, together with such other facts as he may deem of general interest. He shall also include in his report a statement of plans for the management and improvement of the schools. *Third*, he shall prepare and superintend the printing and distribution to county superintendents of such blanks, forms, registers and blank books as may be necessary to the proper discharge of the duties of county superintendents, teachers, and all other school officers charged with the administration of the laws relating to common schools; also the rules and regulations for the use and government of the common schools, and the questions prepared for the examination of teachers. *Fourth*, to travel in the different counties of the state where common schools are taught, as far as possible, without neglecting his other official duties as superintendent of public instruction, for the purpose of visiting schools, of consulting the county superintendents, and addressing public assemblies on subjects pertaining to common schools; also, to open such correspondence as may enable him to obtain all necessary information relating to the system of common schools in other states. He shall submit, quarterly, a statement of expenditures for traveling expenses, which shall be audited by the state auditor, who shall issue a warrant on the state treas-

Form and scope of report.

Must prepare and distribute blanks to county superintendents.

Quarterly statements.

urer for the payment of such amounts as shall be found to have been properly incurred; *Provided*, That said expenditures shall not exceed eight hundred dollars in any one year: *And provided further*, That the postage, stationery and other office expenses shall be paid for in the same manner as in case of other state officers. *Fifth*, he shall cause to be printed, with an appendix of appropriate forms and instructions for carrying into execution, the laws relating to common schools, and distribute to each county superintendent a sufficient number of copies to supply each school and district officer, and shall cause the same to be re-printed and distributed as often as any change in the laws is made of sufficient importance, in his opinion, to justify the same. *Sixth*, he shall be *ex-officio* president of the board of education. *Seventh*, he shall biennially, on or before the first day of May following the election of county superintendents, call a convention of county superintendents of this state, at such time and place as he may deem most convenient, for the discussion of questions pertaining to the supervision and administration of the school laws, and such other subjects affecting the welfare and interests of the common schools as may be properly brought before it. *Eighth*, he shall, between the first and tenth days of March and September of each year, apportion the state common school funds, subject to apportionment, among the several counties of the state, in proportion to the number of children in each county between the ages of five and twenty-one years, as the same shall appear by the reports of the several county superintendents for the school year just closed: *Provided*, That in case no report of the enumeration of any county for the school year last closed has been received, the apportionment shall be made on the basis of the number of children in said county as shown by the last census received from said county. He shall certify said apportionment to the state auditor, and upon said certification the state auditor shall draw his warrant on the state treasurer in favor of the county treasurer of each county for the amount apportioned to said county, and transmit the same to the several county treasurers. The superintendent of

Limit of expenses.

President of board of education.

Must certify apportionment.

public instruction shall also certify to the county superintendents of schools of each county, the amount apportioned to that county. It shall be the duty of the state auditor to notify the superintendent of public instruction on or before the first day of March and September of each year the amount of the state common school fund subject to apportionment. *Ninth*, he shall annually require of the president, manager or principal of every seminary, academy and private school, a report of such facts arranged in such form as he may prescribe, and he shall furnish blanks for such reports, and it is made the duty of every such president, manager or principal to fill up and return such blanks within such time as the state superintendent may direct. Other duties.

SEC. 4. The superintendent of public instruction shall have his office at the capital of the state, where he shall keep all books and papers appertaining to the business of his office, and shall keep and preserve in his office a complete record of statistics and all matters pertaining to the educational interests of the state, as well as a record of the meetings of the state board of education. He shall file all papers, reports and public documents transmitted to him by the school officers of the several counties of the state each year, separately. Copies of all papers filed in his office, and his official acts, may be certified by him and attested by his official seal, and when so certified shall be evidence equally and in like manner as the original papers. He shall decide all points which may be submitted to him in writing by any school officer, teacher or person in this state, on appeal from the decision of the county superintendents of schools, and his decision shall be final unless set aside by a court of competent jurisdiction. He shall, at the expiration of his term of office, deliver over to his successor all records, books, maps and documents, and papers of whatever kind belonging to his office, or which may have been received by him for the use of his office. Location of office. File papers separately. Judicial duties.

SEC. 5. The superintendent of public instruction shall be allowed, and is hereby authorized, to appoint a clerk for his office, whose compensation shall not exceed five Clerk.

hundred dollars per annum, to be paid in the manner prescribed for the payment of state officers.

TITLE III.—BOARD OF EDUCATION.

Four members.

SEC. 6. The governor shall appoint, by and with the advice and consent of the state senate, four suitable persons, at least two of whom shall be selected from those actually engaged in teaching in the common schools of this state, who, together with the superintendent of public instruction, shall constitute the state board of education. The persons appointed shall hold their office for two years from the first Monday in March next following their appointment, and shall serve until their successors are appointed and qualified: *Provided*, That the term of office of the first board appointed in accordance with this act shall expire on the first Monday in March, 1891.

Annual meetings of board.

SEC. 7. The state board of education shall hold an annual meeting at the capital of the state on the first Tuesday in June of each year, and may hold such special meetings as deemed necessary for the transaction of public business, such special meetings to be called by the superintendent of public instruction. The persons appointed as members of the board of education shall be paid for their services at the rate of five dollars per diem for the actual number of days' attendances at said meetings, and shall be further entitled to actual traveling expenses in attending said meeting, compensation and traveling expenses to be paid by the state treasurer, on warrant of the state auditor, out of funds not otherwise appropriated, upon the certificate of the superintendent of public instruction: *Provided*, That the expenses of the whole board shall not exceed the sum of one thousand dollars in any one year.

Expense limit.

Powers of board.

SEC. 8. The said board shall have power—*First*, to adopt or re-adopt, at their first regular meeting in June, eighteen hundred and ninety, a uniform series of text-books for the use of the common schools, including graded common schools, throughout the state: *Provided*, They can secure an exchange of books at any time in use for those of the same grade, or an exchange of those of a lower

grade for those of the next higher grade, without a greater average cost to the people than two-fifths of the contract retail price of the books in use at the time of adoption; and enter into contract with the publishers for the supply of the same, to take effect on the first day of the following September; and the books so adopted shall not be changed within five years thereafter, unless the publishers of such adopted books shall fail to comply with the terms of the contract. Before making any adoption, the superintendent of public instruction shall advertise for at least six weeks in such papers or periodicals of general circulation, as he may determine, that the board of education will receive sealed proposals for the supply of text-books to the people of the state. Said advertisements shall state the day and hour upon which said proposals shall cease to be received. It shall, also, name all the kinds of books for the supply of which proposals are invited, and be signed by the superintendent of public instruction, and that proposals so advertised for shall state the price at which the books proposed shall be exchanged for the books in use at the time of making such proposals, and it shall state the wholesale price which shall be maintained in the state, and also the uniform retail price which shall be maintained in at least one place in every county in this state during the time the books shall continue in use. Said proposals shall be marked "Sealed proposals to furnish text-books for the common schools of the state of Washington," and shall be addressed to the superintendent of public instruction, and shall not be opened before the hour advertised, nor in the presence of less than three members of the board. Immediately upon the opening of the bids they shall be read in open board, and adoption of books and award of the contract shall be made within ten days following. No books shall be adopted without a majority vote of the whole board: *Provided*, That the board shall have power to reject any and all proposals and to advertise again as before for new proposals, which may be considered at a special meeting to be called by the superintendent of public instruction, who shall re-advertise for proposals as above pro-

Must advertise for bids for supply of text-books.

Form of bids.

Powers of board.

vided. The publishers awarded the contract by the board shall guarantee all the terms of the proposal on which it is made, by a bond, with two or more sufficient sureties for faithful performance, which sureties shall be citizens of the state, and shall cover such period as the books may remain in use, said bond to be approved by the board and the attorney general. *Second*, to prepare a course of study for the common schools, except graded schools, and to prescribe such rules for the general government of the common schools as shall secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interests of the common schools. *Third*, to use a common seal and elect one of their own members secretary. He shall keep a correct record of all proceedings of the board, and shall file a certified copy of the same in the office of the superintendent of public instruction. *Fourth*, to sit as a board of examination at their annual or special meetings, and grant state certificates and life diplomas. State certificates shall be granted only to such applicants as shall file with the board satisfactory evidence that they have taught successfully twenty-seven months, at least nine months of which have been in the public schools of this state. The applicant must also either pass a satisfactory examination in all the branches required for first grade county certificates, also pedagogy, plane geometry, geology, natural history, civil government, psychology, book-keeping, composition, English literature and general history, or file with the board a certified copy of a diploma from some state normal school, or of a state or territorial certificate from any state or territory, the requirements to obtain which shall not have been less than those required by this act. State certificates shall be valid for five years, and may be renewed without examination, and shall entitle the holder to teach in any common school in the state. They may be revoked at any time for cause deemed sufficient by the board. Life diplomas shall be granted to such applicants only as shall file with the board satisfactory evidence that they have taught successfully for ten years, not less than one of which shall have been in the common schools of this state. In other respects the requirements

Course of study.

Seal.

Certificates and life diplomas.

State certificates valid for five years.

shall be the same as those required for state certificates; but life diplomas shall be valid during the life of the holder, unless revoked for cause deemed sufficient by the board, and shall entitle the holder to teach in any common school in the state. The fee for state certificates shall be three dollars, and for life diplomas five dollars. Said fees must be deposited with the application, and cannot be refunded to the applicant unless the application be withdrawn before it has been considered by the board. The fees collected shall be paid into the state treasury. *Fifth*, to prepare a uniform series of questions to be used by the county boards of examiners in the examination of teachers. Any member of said board who shall, directly or indirectly, disclose any questions thus prepared, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one hundred nor more than five hundred dollars.

Fees.

Questions for county examiners.

SEC. 9. Whenever any vacancy in the board shall occur, whether by death, removal, resignation or otherwise, the governor shall fill the vacancy by appointment.

Vacancies.

TITLE IV.—COUNTY SUPERINTENDENTS.

SEC. 10. A county superintendent of common schools shall be elected in each county of the state at each general election, whose term of office shall begin on the second Monday in January next succeeding his election, and continue for two years, and until his successor is elected and qualified. He shall take the oath or affirmation of office, and shall give an official bond in a sum to be fixed by the board of county commissioners. He may, at his own cost, appoint a deputy, who shall qualify in the same manner as the county superintendent, and perform all the duties of the office, subject, however, to revision by the county superintendent. The county commissioners of each county shall fill any vacancy that may occur in the office of county superintendent until the next general election.

Term of office.

Deputy.

Vacancy.

SEC. 11. Each county superintendent shall have the power, and it shall be his duty — *First*, to exercise a careful supervision over the schools of his county, and to see that all the provisions of this act are observed and followed

Duties of county superintendents.

by teachers and school officers. *Second*, to visit each school in his county not less than one nor more than three times in each year: *Provided*, That in incorporated towns and cities where city superintendents are employed, the county superintendent shall be entitled to pay for one visit only in each year: *Provided*, That he shall receive mileage in going to and returning from said school for not more than two trips annually. *Third*, to distribute promptly all reports, laws, forms, circulars and instructions which he may receive for the use of the schools and the teachers. *Fourth*, to enforce the course of study adopted by the board of education, and to enforce the rules and regulations required in the examination of teachers. *Fifth*, to keep on file and preserve in his office the biennial report of the superintendent of public instruction. *Sixth*, to keep in a good and well bound book, to be furnished by the county commissioners, a record of his official acts. *Seventh*, to carefully preserve all reports of school officers and teachers, and at the close of his term of office deliver to his successor all records, books, documents and papers belonging to the office, taking a receipt for the same, which shall be filed in the office of the county auditor. *Eighth*, to administer oaths and affirmations to school directors, teachers and other persons, in all official matters connected with or relating to schools, but shall not make or collect any charge or fee for so doing. *Ninth*, to keep in a suitable book an official record of all persons examined for teachers' certificates, showing the name, age, nationality, date of the examination and grade of certificate issued. He shall also retain, for six months, a list of the questions and the written answers to the same, of all applicants, and hold the same subject to the order of the superintendent of public instruction, and in case a certificate is refused by the county board of examiners, or revoked by the county superintendent, the right of appeal to the superintendent of public instruction shall not be denied the teacher or applicant: *Provided*, That said appeal be taken within thirty days from the date of the notice of such revocation or refusal. *Tenth*, to make an annual report to the superintendent of public instruction, on the first day of August

Records of office.

Preserve certain papers.

Annual report.

of each year, for the school year ending June 30th, next preceding. The report shall contain an abstract of the reports made to him by the district clerks, and such other matters as the superintendent of public instruction shall direct. The county superintendent shall retain a copy of said report and file the same in his office. *Eleventh*, to keep in his office a full and correct transcript of the boundaries of each school district in the county. In case the boundaries of districts are conflicting or incorrectly described, he shall change, harmonize and describe them, and make a report of said action to the county commissioners, who shall cause said report to be entered on their records. The county superintendent shall, on request, furnish the district clerks with descriptions of the boundaries of their respective districts. *Twelfth*, to appoint directors and district clerks to fill vacancies; to appoint directors and district clerks for any new districts: *Provided*, That when any new district is organized, such of the directors and district clerk of the old district as reside within the limits of the new one shall be directors and district clerk of the new one, and the vacancies in the old district shall be filled by appointment. *Thirteenth*, to apportion, on or before the first Monday in January, April, July and October of each year, the county school fund and such state common school funds as have been apportioned to his county, in the following manner: He shall apportion one-fourth of the total amount to be apportioned to each district, in proportion to the number of teachers employed therein, and shall determine the number of teachers by allowing one teacher for every seventy school census children and fraction thereof over thirty: *Provided*, That each school district shall be entitled to at least one teacher, except that to joint or union districts he shall give such proportionate amount as will be just and equitable. The remaining three-fourths to be apportioned to each district in proportion to the number of census children as shown by the reports of the district clerks for the school year last closed. He shall certify the result of the apportionment to the county treasurer, and also notify each district clerk of the amount apportioned to that district.

Boundaries of districts.

Apportion funds.

Certify apportionment.

Fourteenth, to appoint, for one year, two persons holding the highest grade certificate in his county, and such persons, with the county superintendent, shall constitute a board of examiners for the examination of teachers. It shall be the duty of the county board of examiners in all counties having one thousand or more children of school age to be at the county seat on the second Thursday of the months of February, May, August and November of each year, for the purpose of examining teachers; but in counties having less than one thousand children of school age, the county board of examiners shall meet the second Thursday of the months of May and November for the purpose of examining teachers. The superintendent shall give ten days' notice of the same by publication in some newspaper of general circulation, published in his county, or if there be no newspaper, then by posting up handbills, or otherwise. Such examination shall be conducted according to the rules prescribed by the state board of education, and no other questions shall be used except those furnished by the said board.

Duties of county examiners.

Rules for examinations.

Grades of certificates.

SEC. 12. There shall be three grades of certificates—first, second and third. Unless revoked for cause, first grade certificate shall entitle the holder to teach for three years; second grade for two years, and third grade for one year; but the issuing of more than one third grade certificate to any person shall be left to the discretion of the county board of examiners. No first grade certificate shall be granted until the applicant shall have filed with the county superintendent satisfactory written evidence of having taught successfully one school year of nine months. Boards of examiners may, in their discretion, issue certificates without examination to the graduates of the normal department of the State University of Washington, or to the graduates of any state normal school, or to the holder of a state certificate or life diploma from any state or territory. Those holding first grade county certificates, and who shall have been actually engaged in teaching for three years, shall be eligible to examination for state certificates. Any teacher holding a certificate in force and effect, granted by any county board of examiners in this state, or by a

lawful board of examiners in any other state, the requirements to obtain which shall not be less than those required in this state, shall be entitled to exercise all the duties of teacher in any county in this state, upon presenting such certificate to the county superintendent of the county in which said certificate is desired to be used, whose duty it shall be to endorse it, and such certificate shall be in full force and effect until the next meeting of the county board of examiners, and no longer: *Provided*, That the county board may, at their discretion, endorse certificates from other counties in this state for the unexpired term thereof. All applicants for certificates shall be at least seventeen years of age, shall have attended a teachers' institute, and shall be examined in reading, penmanship, orthography, written and mental arithmetic, geography, English grammar, physiology and hygiene, history and constitution of the United States, school law and constitution of the State of Washington, and the theory and art of teaching; but no person shall receive a first grade certificate who does not pass a satisfactory examination in the additional branches of natural philosophy, English literature and algebra.

Effect of certificate.

Age of applicants.

SEC. 13. County examiners appointed by the county superintendent shall receive not less than three nor more than five dollars per day for the time actually employed in the examination of teachers and, in addition thereto shall receive mileage from their homes to the place of meeting of said board and return by the most usual route, at the rate of ten cents per mile.

Compensation of examiners.

SEC. 14. The county commissioners shall provide the county superintendent with a suitable office at the county seat, and all necessary blanks, books, stationery, postage and other expenses of his office shall be paid by the county treasurer out of the county fund upon a statement made quarterly and certified to by him, and allowed by the board of county commissioners. He shall keep his office open for the transaction of official business such days each week as the duties of the office may require, and shall keep posted on the door of his office a notice of said office days and hours of such days.

Office of superintendent at county seat.

Penalty for failure to make full report.

SEC. 15. If the county superintendent fails to make a full and correct report to the superintendent of public instruction of all statements required by him, he shall forfeit the sum of fifty dollars from his salary, and the board of county commissioners are hereby authorized and required to deduct therefrom the sum aforesaid, upon information from the superintendent of public instruction that such reports have not been made.

Appeal.

SEC. 16. Any person or board of directors aggrieved by any decision or order of the county superintendent may, within thirty days after the rendition of such a decision or making of such order, appeal therefrom to the superintendent of public instruction. The basis of the proceeding shall be an affidavit by the party aggrieved, filed with the superintendent of public instruction within the time for taking the appeal. The affidavit shall set forth the errors complained of in a plain and concise manner. The superintendent of public instruction shall, within five days after the filing of such affidavit in his office, notify the county superintendent in writing of the taking of such appeal, and the county superintendent shall, within ten days after being thus notified, file in the office of the superintendent of public instruction a complete transcript of the record and proceedings relating to the decision complained of, which shall be certified to be correct by the county superintendent. The superintendent of public instruction shall examine the transcript of such proceedings and render a decision thereon, but no new testimony shall be admitted, and his decision shall be final unless set aside by a court of competent jurisdiction. When an applicant for a certificate at a regular examination shall feel aggrieved at the decision of the county board of examiners, and shall appeal to the superintendent of public instruction, the questions used and the answers given shall be examined by him, and if the decision of the county board of examiners be reversed, the superintendent of public instruction shall instruct the county board of examiners to issue to the applicant a certificate of such grade as the answer shall warrant: *Provided*, That a good moral character can

Transcript of proceedings.

be shown by the applicant to the satisfaction of the superintendent of public instruction.

Compensation and mileage of county superintendent.

SEC. 17. The county superintendent shall, in addition to the salary fixed by law, be allowed three dollars for each school visited, and mileage at the rate of ten cents per mile for each mile actually and necessarily traveled in making such visits and attending convention of county superintendents, called by the superintendent of public instruction, but shall not be allowed to charge or collect any fee for the performance of any other duty herein named: *Provided*, That no constructive mileage shall be charged.

TITLE V.—SCHOOL DISTRICTS.

Definition.

SEC. 18. The term "school district," as used in this act, is declared to mean the territory under the jurisdiction of a single school board, designated as "board of directors," and shall be organized in form and manner as hereinafter provided, and shall be known as district No. ———, ——— county: *Provided*, That all school districts now existing, as shown by the records of the county superintendents, are hereby recognized as legally organized districts.

Organizing new districts.

SEC. 19. For the purpose of organizing a new district, a petition in writing shall be made to the county superintendent, signed by at least five heads of families residing within the boundaries of the proposed new district, which petition shall describe the boundaries of the proposed new district and give the names of all children of school age residing within the boundaries of such proposed new district at the date of presenting said petition. The county superintendent shall give notice to parties interested by posting notices at least twenty (20) days prior to the time appointed by him for considering said petition, in at least three of the most public places in the proposed new district, and one on the school-house door of each district affected by the proposed change, or if there be no school-house, then in one of the most public places of said old district, and shall, on the day fixed in the notice, proceed to hear said petition, and if he deem it advisable to grant the petition, he shall make an order establishing said dis-

County superintendent must give notice.

trict and describing the boundaries thereof, from which order an appeal may be taken by three resident taxpayers of said new district to the board of county commissioners, in the same manner that appeals may be taken from justices courts to the superior courts, and their decision shall be final.

Transfer of territory.

SEC. 20. For the purpose of transferring territory from one district to another, or enlarging the boundaries of any school district, a petition in writing shall be presented to the county superintendent, signed by a majority of heads of families residing on the territory which it is proposed to transfer or include, which petition shall describe the change which it is proposed to have made. It shall also state the reason for desiring said change, and the number of children of school age residing on the territory to be transferred. The county superintendent shall file said petition in his office, and shall give notice to parties interested by posting notices at least twenty days prior to the time appointed by him for considering said petition, one of which shall be in a public place in the territory which it is proposed to be annexed or transferred, and one on the door of the school-house in each district affected by the change, or if there be no school-house in such district, then in some public place in such district or districts, and at the time stated in said notices he shall proceed to hear said petition, and if he deem it advisable, he shall grant the same and make an order fixing the boundaries, and unless an appeal be taken to the board of county commissioners, or upon the decision of said board, he shall certify his action to the county commissioners at their next regular session, stating the change or changes in boundaries so made, and they shall cause such certificate to be entered in their records, with the description of said boundaries.

Certify action to commissioners.

Rights of new district.

SEC. 21. No new district formed by the subdivision of an old one shall be entitled to any share of public money belonging to the old district until the school has actually been taught one month in the new district, and unless within eight months from the order of the county superintendent granting such new district a school is opened,

the action making a new district shall be void, and all elections or appointments of directors or clerks made in consequence of such action, and all rights and office of parties so elected or appointed shall cease and determine; and all taxes which may have been levied in such old district shall be valid and binding upon the real and personal property of new districts, and shall be collected and paid into the school fund of the old district.

SEC. 22. When a new district is formed by the division of an old one, it shall be entitled to a just share of the school moneys to the credit of the old district after the payment of all outstanding debts at the time when school was actually commenced in such new district, and the county superintendent shall divide such remaining moneys, and such as may afterwards be apportioned to the old district, according to the number of school children resident in each district, for which purpose he shall order a census to be taken: *Provided*, That the new district shall be entitled to such portion of any special tax levied and collected for the year in which the new district is created, as the amount of such tax paid by that portion of the old district which is embraced in the new bears to such old district.

Superintendent shall apportion surplus money.

SEC. 23. No school district shall be entitled to receive any apportionment of any school moneys, unless the teachers who have been employed in the schools of such districts held legal certificates of fitness for the occupation of teaching, in full force and effect. Any district using text-books other than those prescribed by the board of education, or any district failing to comply with the course of study prescribed by the board of education, shall forfeit twenty-five per cent. of their school fund for that year, and it is hereby made the duty of the county superintendent to deduct said amount from the apportionment to be made to any district failing in either or both of the above named requirements, and the amount thus deducted shall revert to the general school funds of the county.

Must use proper text-books.

SEC. 24. No school district shall be entitled to receive any apportionment of county school moneys which shall not have maintained school for at least three months dur-

ing the preceding year: *Provided*, That any new district formed by the division of an old one shall be entitled to its just share of school moneys when the time that school was maintained in the old district before division, and in the new one after division, shall be equal to at least three months.

Must maintain school three months each year.

TITLE VI.—BOARDS OF DIRECTORS.

SEC. 25. Directors of school districts shall be elected at the regular annual school election. At the first annual election in all new districts three directors shall be elected, for one, two and three years, respectively. The ballots shall specify the term for which each is to be elected. In all districts in which elections have been previously held, one director shall be elected for the term of three years, and if any vacancies are to be filled, a sufficient number to fill them for the unexpired term or terms, and the ballots shall specify the respective term for which each director is to be elected. Directors-elect shall take office immediately after qualifying, and shall hold their office until their successors are elected and qualified. Any director who fails to qualify within ten days after his election, shall forfeit all rights to his office, and the county superintendent shall fill the office by appointment, to hold until the next annual election. Upon the death, removal or resignation of any director, the county superintendent shall fill such vacancy by appointments, to hold office until the next annual election.

How elected.

Vacancies.

SEC. 26. Every board of directors, unless otherwise specially provided by law, shall have power, and it shall be their duty—*First*, to employ, and for sufficient cause discharge, teachers, mechanics or laborers, and to fix, alter, allow and order paid their salaries and compensation; *second*, to enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of the schools, pupils and teachers, and to enforce the course of study prescribed by the state board of education; *third*, to provide and pay for school furniture and apparatus, and such other articles, materials and supplies as may be necessary for the use of the schools; *fourth*, to rent, repair, furnish

Powers and duties of directors.

and insure school-houses; *fifth*, to build or remove school-houses, purchase or sell lots or other real estate, when directed by a vote of the district so to do; *sixth*, to purchase personal property in the name of the district, and to receive, lease and hold for their district any real or personal property; *seventh*, to suspend or expel pupils from school, who refuse to obey the rules thereof, and may exclude from school all children under six years of age; *eighth*, to provide books for the children of indigent parents on the written statement of the parents of such children that they are unable to purchase the same; *ninth*, to require all pupils to be furnished with such books as may have been adopted by the state board of education, as a condition to membership in the schools; *tenth*, to exclude from school and school libraries all books, tracts, papers and other publications of any immoral or pernicious tendency or of a sectarian or partisan character; *eleventh*, to authorize the school room to be used for summer and night schools, literary, scientific, religious, political, mechanical or agricultural societies with the consent of and under such regulations as the board of directors may adopt; *twelfth*, to require teachers to conform to the provisions of the school law.

Liability for debts.

SEC. 27. Any board of directors shall be liable as directors in the name of the district for any judgment against the district for any salary due any teacher and for any debts legally due, contracted under the provisions of this act, and they shall pay such judgment or liability out of the school funds to the credit of the district.

Children from adjoining district.

SEC. 28. Any board of directors shall have power to make arrangements with the directors of an adjoining district for the attendance of such children in the school of either district as may be best accommodated therein, and to transfer the school money due by apportionment to such children to the district in which they may attend school: *Provided*, That in case such arrangements are not made, or children from school districts not adjoining desire to attend school in their district, they may charge reasonable tuition for such attendance, and the moneys so collected shall be used in payment of salaries of teachers.

SEC. 29. Any board of directors shall have the power to make such by-laws for their own government, and for the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this act, or the instructions of the superintendent of public instruction, or the state board of education.

Regular meetings.

A regular meeting of each board of directors shall be held on the last Saturday of March, June, September and December. They may, however, hold such other special or adjourned meetings as they may from time to time determine, or as may be specified in their by-laws.

SEC. 30. The board of directors of each school district

School property.

shall have custody of all school property belonging to the district, and shall have power, in the name of the district or in their own names as directors of the district, to convey by deed all the interest of their district in or to any school-house or lot directed to be sold by vote of the district, and all conveyances of real estate made to the district, or to the directors thereof, shall be made to the board of directors of the district and to their successors in office; said board in the name of the district shall have power to transact all business necessary for maintaining schools and protecting the rights of the district.

SEC. 31. It shall be unlawful for any director to have any pecuniary interest, either directly or indirectly, in any erection of school-houses, or for warming, ventilating, furnishing or repairing the same, or be in any manner connected with the furnishing of supplies for the maintenance of the schools, or to receive or accept any compensation or reward for services rendered as director.

SEC. 32. Any person aggrieved by any decision or order of the board of directors may, within thirty days after the

Appeal.

rendition of such decision or making of such order, appeal therefrom to the county superintendent of the proper

Form of procedure.

county; the basis of such proceeding shall be an affidavit filed by the party aggrieved with the county superintendent within the time for taking the appeal. The affidavit shall set forth the errors complained of in a plain and concise manner. The county superintendent shall, within five days after the filing of such affidavit in his office, notify

the clerk of the proper district, in writing, of the taking of such appeal, and the latter shall, within ten days after being thus notified, file in the office of the county superintendent a complete transcript of the record and proceeding relating to the decision complained of, which shall be certified to be correct by the clerk of the district. After the filing of the transcript aforesaid in the office, he shall notify, in writing, all persons interested, of the time and place where the matter of the appeal will be heard by him. At the time thus fixed for hearing he shall hear testimony for either party, and for that purpose may administer oaths if necessary, and he shall make such decision as may be just and equitable, which shall be final unless appealed from, as provided for in this act.

TITLE VII.—DISTRICT CLERKS.

SEC. 33. A district clerk shall be elected in each district at each annual school election, to hold office for one year, and until his successor is elected and qualified. In case of the death, removal or resignation of the district clerk, the county superintendent shall fill the vacancy by appointment.

Duties of clerk

SEC. 34. The duties of the district clerk shall be as follows: *First*, to attend all meetings of the board of directors; but if he shall not be present, the board of directors shall select one of their number to act as clerk, who shall certify the proceedings of the meeting to the clerk of the district, to be recorded by him. He shall keep his records in a book, to be furnished by the board of directors, and he shall preserve copies of all reports made to the county superintendent, and safely preserve and keep all books and documents belonging to his office, and shall turn the same over to his successor. *Second*, to keep accurate and detailed accounts of all receipts and expenditures of school money. At each annual school meeting the district clerk must present his record book for public inspection, and shall make a statement of the financial condition of the district and of the action of the directors, and such record must always be open for public inspection. *Third*, to take, annually, between the first and the twentieth of June

School census. of each year, an exact census of all children and youth between the ages of five and twenty-one years who were *bona fide* residents of the district upon the first day of June of that year: *Provided*, That Indian children not living under the guardianship of white persons, or who have not severed their tribal relations, or Mongolian children not native born, shall not be included in said census, and shall specify the number and sex of such children, and the

Defective youth. names of their guardians or parents. He shall also note all defective youth between the ages of five and twenty-one years. He shall, under oath, make a full report thereof, on blanks furnished for that purpose, to the county superintendent on or before the first day of July thereafter. He shall also, at the same time, make out and file in the of-

Report. fice of the county superintendent a report of the affairs of his district. Said report shall be made upon blanks furnished by the superintendent of public instruction, and contain such items of information as said superintendent or the state board of education shall require, including the following:

Form of report. The number of persons, male and female, in his district between the ages of five and twenty-one years; the number of schools and the branches taught in each; the number of pupils enrolled in each school during the year; the number of teachers employed in each school, and the compensation of each per month; the number of days school was taught during the year then passed, and by whom; the number of pupils enrolled during the year, and the average daily attendance; the average cost of school per month for each pupil, based upon the total enrollment, and also the average cost, based upon the average daily attendance. In estimating these averages the clerk shall take account of the teachers' salaries and all current expenses, the text-books used in each school by name, the number of volumes in the library in each school, the aggregate amount paid teachers during the year, the number of school-houses and the estimated value of each, the amount raised by tax in the district during the year for the support of schools, and for buildings, sites and furniture, the amount raised by subscription or by other means than tax, the amount of bonded indebtedness of the district and

the rate of interest paid; also such other items as he may deem of importance and as may be required by the blanks furnished for said report, and record a copy of all reports in his record book. *Fourth*, to keep an accurate account of all the expenses incurred by him in his district in keeping the school-house in repair, in providing for necessary janitor work, and in providing school supplies, and for other expenses incurred by him on account of the school, which accounts must be audited by the board of directors and paid out of the district school fund. *Fifth*, to give the required notice of all annual or special elections; also, to give notice of the regular and special meetings of the board of directors as herein authorized. *Sixth*, to report to the county superintendent at the beginning of each term of school, the name of the teacher and the proposed length of the term, and to supply the teacher with the school register furnished by the superintendent of public instruction.

Record of expenses.

Notice of election.

SEC. 35. The district clerk shall be paid three dollars per day for time actually and necessarily spent in taking the census, to be determined and paid by the directors out of the funds of the district. He shall receive such other compensation for other services as may be allowed by the board of directors.

Compensation of clerk.

SEC. 36. In case the district clerk fails to make the reports herein provided at the proper time, he shall forfeit and pay to the district the sum of twenty-five dollars for each and every such failure. He shall also be liable if, through such neglect, the district fails to receive its just apportionment of school moneys, for the full amount so lost, to be recovered in a suit brought by any citizen of such district, in the name of and for the benefit of such district.

Penalty for failure to report.

TITLE VIII.—TEACHERS.

SEC. 37. No person shall be accounted as a qualified teacher, within the meaning of the school law, who has not first appeared before the board of examiners of the county in which he proposes to teach, and received a certificate setting forth his qualifications; or has not a state certificate, or life diploma from the state board of educa-

Qualifications.

tion, or a certificate from some other county or state endorsed by the county superintendent.

Teachers must report to county superintendent.

SEC. 38. Every teacher employed in any common school shall make a report to the county superintendent at the time of the contract to teach such school, the number of the district in which he is to teach, the grade of his certificate, date it expires, and the proposed length of term, and at the close of any school to report to the county superintendent on the blanks prescribed by the superintendent of public instruction. Any teacher who shall be teaching at the close of the school year, shall make a report to the county superintendent immediately upon the close of such school year. Copies of all reports made by teachers shall be furnished to the clerk of the district, to be by him filed in his office. No board of directors shall draw any order or warrant for the salary of any teacher for the last month of his service until the reports herein required shall have been made and received: *Provided*, That in all schools acting under the direction of a city superintendent, the report of such superintendent shall be accepted by the county superintendent and the directors in lieu of the teacher's report; and that when there is no city superintendent, the report of the principal shall be accepted in lieu of the teacher's report.

School register.

SEC. 39. Every teacher shall keep a school register in the manner provided for, and no board of directors shall draw any warrant for the salary of any teacher for the last month of his service in the school, at the end of any term or year, until they shall have received a certificate from the district clerk that the said register has been properly kept, the summaries made and the statistics entered, or until, by personal examination, they shall have satisfied themselves that it has been done. Teachers shall faithfully enforce in school the course of study and regulations prescribed, and if any teacher shall wilfully refuse or neglect to comply with such regulations, then the board of directors shall be authorized to withhold any warrant for salaries due until such teacher shall comply therewith. No teacher shall be employed except by written order of a majority of directors, at a regular or special meeting

thereof, nor unless the holder of a legal teacher's certificate in full force and effect.

SEC. 40. In every contract between any teacher and board of directors, a school month shall be construed to be twenty school days, or four weeks of five days each, and no teacher shall be required to teach school on Saturdays or any legal holiday, and no deduction from the teacher's time or salary shall be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school shall not be taught. School month.

SEC. 41. Every teacher shall have the power to hold every pupil to a strict accountability in school for any disorderly conduct on the way to or from school, or on the grounds of the school, or during intermission or recess; to suspend from school any pupil for good cause: *Provided*, That such suspension shall be reported to the directors as soon as practicable for their decision. Power of teacher.

SEC. 42. It shall be the duty of all teachers to endeavor to impress on the minds of their pupils the principles of morality, truth, justice, temperance and patriotism; to teach them to avoid idleness, profanity and falsehood; to instruct them in the principle of free government, and to train them up to the true comprehension of the rights, duty and dignity of American citizenship. Duties of teacher.

SEC. 43. Any teacher who shall maltreat or abuse any pupil by administering any undue or severe punishment, or inflict punishment on the head or face, shall be deemed guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be fined in any sum not exceeding one hundred dollars. Penalty for maltreating pupils.

TITLE IX.—SCHOOLS.

SEC. 44. A common school is hereby defined to be a school that is maintained at the public expense in each school district and under the supervision of boards of directors. Every common school, not otherwise provided for by law, shall be open to the admission of all children between the ages of six and twenty-one years residing in that school district, and the board of directors shall have Common school.

the power to admit adults and children not residing in the district, as hereinbefore provided, and to fix the terms of such admission as hereinbefore provided.

Course of study. SEC. 45. All common schools shall be taught in the English language, and instruction shall be given in the following branches, viz.: Reading, penmanship, orthography, written arithmetic, mental arithmetic, geography, English grammar, physiology and hygiene, with special reference to the effects of alcoholic stimulants and narcotics on the human system, history of the United States, and such other studies as may be prescribed by the board of education. Attention must be given during the entire course to the cultivation of manners, to the laws of health, physical exercise, ventilation and temperature of the school room.

Hours of study. SEC. 46. The school day shall be six hours in length, exclusive of any intermission at noon, but any board of directors may fix as the school day a less number of hours than six: *Provided*, That it be not less than four hours for primary schools under their charge, and any teacher may dismiss any or all scholars under eight years of age, after an attendance of four hours, exclusive of an intermission at noon.

Contagious disease. SEC. 47. No teacher or scholar shall be permitted to attend school from any house in which small-pox, varioloid, scarlet fever, diphtheria, or any other contagious or loathsome disease is prevalent. No teacher or scholar shall be permitted to return to school from any house where the above mentioned diseases, or any form of them, has prevailed, until three weeks shall have elapsed from the beginning of convalescence of the patient. In case several individuals have been affected with such disease within the same house, the period of the time must be reckoned from beginning of convalescence of the last case.

Requirements of pupils. SEC. 48. All pupils who may attend common schools, shall comply with the regulations established in pursuance of the law for the government of the schools, shall pursue the required course of studies and shall submit to the authority of the teachers of such school. Continued and willful disobedience and open defiance of authority of the teacher shall constitute good cause for expulsion from

school. Any pupil who shall, in any way, cut, deface or otherwise injure any school-house, furniture, fence or out-building thereof, or any book belonging to other pupils, or any books belonging to the district library, shall be liable to suspension and punishment, and the parent or guardian of such pupil shall be liable for damage on complaint of the teacher or any director, and upon proof of the same.

SEC. 49. The school year shall begin on the first day of July and end on the last day of June. School year.

TITLE X.—SUPPORT OF SCHOOLS.

SEC. 50. The principal of the state school fund shall remain irreducible and permanent. The said fund shall be derived from the following sources, to-wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or common schools; the proceeds of land and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section fifteen (15) of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been and hereafter may be granted to the state for the support of common schools, and such other funds as may be provided by legislative enactment. School fund irreducible.

SEC. 51. The interest accruing on said fund, together with rentals and other revenues derived therefrom from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common school. All schools maintained or supported

Sectarian control or influence.

wholly or in part by the public funds shall be forever free from sectarian control or influence. All losses to the permanent common school fund which shall be occasioned by defalcation, mismanagement or fraud of the agent or officers controlling or managing the same, shall be audited by the proper authorities of the state. The amount so audited shall be a permanent funded debt against the state in favor of the particular fund sustaining such loss, upon which not less than six per cent. annual interest shall be paid.

County tax.

SEC. 52. In addition to the provisions for the support of the common schools hereinbefore provided, it shall be the duty of the county commissioners of each county in the state to levy an annual tax, which levy shall be made at the time and in the manner provided by law for the levying of taxes for county purposes, and said levy shall not be less than four mills on a dollar and not more than ten mills on a dollar of the assessed value of all taxable property, real and personal, within the county, which tax shall be collected by the county treasurer at the same time and in the same manner as state and county taxes are collected. For the support of the common schools there shall also be set apart by the county treasurer all moneys paid into the county treasury arising from fines for breach of any law regulating license for the sale of intoxicating liquors, or for keeping of bowling alleys or billiard saloons, or of any penal law of the state.

TITLE XI.—SPECIAL TAXES.

Directors may submit question to vote.

SEC. 53. The board of directors of any district may, at any time when in their judgment it is advisable, submit to the qualified school electors of the district the question whether a tax not to exceed ten mills on each dollar on the taxable property in the district shall be levied to furnish additional school facilities for said district, or for building one or more school-houses, or for removing or building additions to one already built, or for the purchase of supplies, globe[s], maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes. Such election shall be called and

conducted, as nearly as practicable, according to the provisions herein made for holding annual school elections. At such elections the ballot shall contain the words, "Tax, yes;" or "Tax, no." If a majority of votes cast are "Tax, yes," the officers of the election shall certify the fact to the district clerk, who shall proceed at once to copy from the assessment roll of the county the list of persons and property liable to taxation situated in or owned by residents of the district, and shall certify to the correctness of the list and attach to said list the certification of the election board, showing the result of the election and the rate of tax levied, and deliver the same to the county auditor on or before the first day of October of the year in which said special tax is levied. The county auditor shall extend the same upon the general assessment roll of the county, showing the amount and kind of property so assessed, and certify the same to the county treasurer. The county treasurer shall proceed to collect the tax in the same manner, and at the same time, and with the same power and authority to enforce payment of the same, as in the case of county and state taxes. The county treasurer shall place any tax so collected to the credit of the district to which it belongs.

Collecting special tax.

TITLE XII.—ELECTIONS.

SEC. 54. The election of directors and district clerks shall be held on the first Saturday of November of each year, at the district school-house, if there be one, or if there be none, or if there be more than one, then at a place to be designated by the board of directors.

Directors and clerk.

SEC. 55. The district clerk must at least give ten days' notice of such election, by posting, or by causing to be posted, written or printed notices thereof in at least three public places in the district, one of which must be the place of holding the election. Said notice must designate the place of holding the election, day of holding the election, hours between which polls are to be kept open, names of offices for which persons are to be elected, and terms of office, with a statement of any other questions which the board of directors may desire to submit to the electors of said district. Notices must be signed by the district clerk

Notice of election.

"by order of the board of directors." Unless otherwise designated in the notice of election, the polls shall be open at one o'clock in the afternoon and close at four o'clock in the afternoon, but the board of directors may, previous to giving notice of election, determine on a longer time during which the polls shall be kept open: *Provided*, That in no case shall the polls be opened before nine o'clock in the forenoon nor kept open later than eight o'clock in the afternoon. In no case shall the polls be opened before the hour named in the notice, nor kept open after the hour fixed for closing the polls, but if there is not a sufficient number of electors present at the hour named for opening the polls to constitute a board of election, it shall be lawful to open the polls as soon thereafter as a sufficient number of electors is present: *Provided*, That in cities and incorporated towns the polls shall open not later than one o'clock P. M. and close not earlier than eight o'clock P. M.

Rules of election.

SEC. 56. At the hour fixed for opening the polls the electors present shall select two electors to act as judges of the election, and one elector to act as clerk of the election, and the three selected shall constitute the election board, and no election shall be held unless a sufficient number of electors is present to constitute the board. The judges and clerk aforesaid shall, before entering upon the duties of their office, severally take and subscribe an oath or affirmation faithfully to discharge the duties as such officers of the election, said oath or affirmation to be administered by any school officer or other person authorized to administer oaths. The judges shall, before they commence receiving ballots, cause to be proclaimed aloud at the place of voting that the polls are now open.

Officers must be sworn.

SEC. 57. The voting shall be by ballot. The ballot shall be a paper ticket, containing the names of the persons for whom the electors intend to vote, and designating the office to which such persons so named is intended by him to be chosen. Whenever any person offers to vote, one of the judges shall pronounce his name in an audible voice, and if there be no objections to the qualification to such person as an elector, he shall receive the ballot in the presence of the election board and deposit

Manner of voting.

the same, without being opened or examined, in the ballot-box, and the clerk shall immediately enter the name upon the list headed "Names of voters."

Qualifications of voters.

SEC. 58. Every person, male or female, over the age of twenty-one years, who shall have resided in the school district for thirty days immediately preceding any school election, and in the state one year, and is otherwise, except as to sex, qualified to vote at any general election, shall be a legal voter of any school election, and no other person shall be allowed to vote. Persons offering to vote may be challenged by any legally qualified school elector of the district, and one of the judges of election shall thereupon administer to the person challenged an oath, in substance as follows: "You do swear (or affirm) that you are a citizen of the United States, or have declared your intention to become such; that you are twenty-one years of age, according to your information and belief, that you have resided in this district thirty days next preceding this election, and in the state one year, and that you have not voted before on this day." If he shall refuse to take the oath, his vote shall be rejected. Any person guilty of illegal voting shall be punished as provided in the general election laws of the state.

Counting ballots.

SEC. 59. When the polls are closed, proclamation thereof shall be made at the place of voting and no vote shall afterward be received. As soon as the polls are closed, the judges shall open the ballot-box and commence counting the votes, and in no case shall the box be removed from the room in which the election is held until all the votes are counted. The counting shall be in public. The ballots shall be taken out one by one, by one of the judges, who shall open them and read aloud the name of each person contained therein, and the office for which such person was voted for. The clerk shall write down each office to be filled and the name of each person voted for such office, and shall keep the number of votes by tallies as they are read aloud by one of the judges. The counting of the votes shall continue without adjournment until all the votes are counted. No ticket shall be rejected on account of form or mistake in the initials of

names, if the judges can determine to their satisfaction the person voted for and the office intended.

SEC. 60. Persons having the highest number of votes given for each office shall be declared duly elected, and the clerk of election shall immediately make out and deliver to each person so elected a certificate of election. The clerk of election shall also make out a certificate showing the persons elected to each office at such election, with oath of office of persons elected attached, and mail such certificate to the county superintendent of schools of the county in which the election is held. If two persons have an equal and highest number of votes for one and the same office, they shall, within ten days after the election, appear before the clerk of election of said district and publicly decide by lot which of the persons so having an equal number of votes shall be declared elected, and the clerk of election shall make out and deliver to the person thus elected a certificate of his election and notify the county superintendent of the county as before provided. If the persons above named do not, within ten days after the election, thus decide, the office shall be declared vacant, and the county superintendent shall, when notified of the vacancy, fill the same by appointment.

Duty of clerk.

Deciding a tie.

TITLE XIII.—UNION SCHOOLS.

SEC. 61. Whenever the residents of two or more school districts may wish to unite for the purpose of establishing a graded school, the clerks of said districts shall, upon a written application of five heads of families of their respective districts, call a meeting of the voters of such district at some convenient place by posting up written or printed notices in like manner as provided for calling district election, and if a majority of the voters of each district shall vote to unite for the purpose herein stated, they shall, at their meeting, or any adjourned meeting, elect three directors and a clerk for such union district.

How formed.

SEC. 62. The board of directors and clerk provided for in the preceding section shall, in all matters relating to graded schools, possess all the power, discharge all the duties, and be governed by the laws herein provided for

district directors, and they shall be elected in the same manner as provided in the preceding section.

SEC. 63. The union district thus formed shall be entitled to an equitable share of the school fund, to be apportioned in accordance to section 11, clause thirteen (13) of this act.

TITLE XIV.—GRADED SCHOOLS IN INCORPORATED CITIES AND TOWNS.

SEC. 64. Each incorporated city or town in this state shall be comprised in one district and under one board of school directors, and in all such cities or towns where the enumeration of school children entitled to draw school money is three hundred or more, the directors shall be required to adopt the graded system of teaching in their schools: *Provided*, That nothing in this section shall be so construed as to prevent the extension of such city or town districts a reasonable distance outside the limits of such incorporated city or town: *And provided further*, That the schools of such cities and towns may be graded in such manner as the directors thereof may deem best suited to the wants of such districts.

Extension of districts.

SEC. 65. The directors of incorporated city or town districts may, in their discretion, elect one city or town school superintendent in each district, who may be a teacher of the district, and who shall have the control or management of all the schools in his district, subject to the concurrence of the board of directors.

City superintendent.

SEC. 66. When two or more districts in any town or city are united by the provisions of this act, all the directors of the districts so united shall act as directors of the said new district, and shall have all the powers and authority conferred by the laws of this state upon school directors, and they may designate the person to act as clerk of said district until the next annual school meeting in said district, at which time there shall be three directors and one clerk elected for said district, in the manner provided by law, who shall hold their respective offices as provided for officers of new districts.

Directors of union district.

SEC. 67. Districts thus formed shall be entitled to their full share of common school moneys.

Penalty for neglect or failure.

SEC. 68. Directors failing to organize their districts as herein provided within one hundred and twenty days after the incorporation of such cities or towns, as herein provided, shall be deemed guilty of a misdemeanor, and fined in a sum not exceeding five hundred dollars: *Provided*, That they are supplied with sufficient money to organize the same.

TITLE XV.—SCHOOL OFFICERS.

SEC. 69. When any school officer is superseded, by election or otherwise, he shall immediately deliver to his successor in office all books, papers and moneys pertaining to his office, and every officer who shall refuse to do so, or who shall wilfully mutilate or destroy any such books or papers, or any part thereof, or who shall misapply moneys entrusted to him by virtue of his office shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by any fine not to exceed one hundred dollars.

Officers liable.

SEC. 70. Every person elected or appointed to any office mentioned in this act shall, before entering upon the discharge of the duties thereof, take an oath or affirmation to support the constitution of the United States and of the State of Washington, and to promote the interest of education, and faithfully discharge the duties of his office according to the best of his ability. In case any officer has a written appointment or commission, his oath or affirmation shall be endorsed thereon and sworn to before any officer authorized to administer oaths. School officers are hereby authorized to administer all oaths or affirmations appertaining to their respective offices without charge or fee.

Oath of office.

TITLE XVI.—COUNTY TREASURER.

SEC. 71. It shall be the duty of the county treasurer of any county—*First*, to receive and hold all school moneys as a special deposit and keep separate accounts of their disbursements to the school districts which shall be entitled to receive the same, according to the apportionment of the county superintendent of common schools; *second*, to notify the county superintendent of common schools of the amount of county school fund in the county treasury at the time fixed for making the apportionment, and to

Special deposit.

inform such superintendent of the amount of school money belonging to any other fund subject to apportionment; *third*, to pay the amount of common school tax levied and such other moneys paid into the school fund on the warrant of the directors whenever such warrants are countersigned by the district clerk and properly endorsed by the holder; *fourth*, to make, annually, on the 30th day of June of each year, to the county superintendent of common schools a financial report showing the amount of money on hand at the beginning of the school year, the amount expended during the year and the sum to the credit of the school districts at the close of the school year, on such blanks as may be furnished by the superintendent of public instruction. Annual report.

TITLE XVII.—TEACHERS' INSTITUTE.

SEC. 72. Whenever the number of school districts in any county is twenty-five or more, the county superintendent must hold a teachers' institute each year, and every teacher employed in a common school in the county must attend such institute during its whole time.

SEC. 73. In any county where there are less than twenty-five school districts, the county superintendent may, in his discretion, hold an institute. Superintendent may hold institute.

SEC. 74. Each session of the institute must continue not less than three days.

SEC. 75. When the institute is held during the time the teachers are employed in teaching, their pay shall not be diminished by reason of their attendance when certified to by the county superintendent.

SEC. 76. The county superintendent must keep an accurate account of the actual expenses of the institute, with vouchers for the same, and present the bill to the county commissioners, who shall allow the same: *Provided*, That such amount shall not exceed the sum of two hundred dollars for any year. Expenses of institute.

SEC. 77. Any teacher failing to attend the institute in the county in which he holds a certificate to teach, unless on account of sickness, or for other good and sufficient reasons, shall be deemed to have forfeited his certificate. Teachers must attend.

MISCELLANEOUS.

SEC. 78. Whenever the word he or his occurs in this act, referring to either the members of the board of education, county superintendents, city superintendents, teachers, or other school officers, it shall be understood to mean also she or her.

Text-books.

SEC. 79. Any series of text-books adopted by the board of education shall remain in use not less than five years.

SEC. 80. All school districts in the state shall maintain school during at least three months each year. All graded school districts in incorporated cities and towns shall maintain school at least six months each school year, and no district which has been organized more than one year shall receive any portion of the school fund which has not, during the preceding school year, complied with the provisions of this section.

Compulsory education.

SEC. 81. All parents, guardians and other persons in this state having, or who may hereafter have, immediate custody of any child or children between the ages of eight and fifteen years, shall send the same to school at least three months in each year said child or children may remain under their supervision.

Penalty.

SEC. 82. Any person mentioned in the preceding sections who shall fail or refuse to comply with the provisions of said sections shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten ($10) dollars or more than twenty-five ($25) dollars, and the fine so collected shall be paid into the school fund of the district.

Report as to orphans.

SEC. 83. District clerks shall report to the superior judge before the first day of December of each year the name and residence of every orphan child that failed to attend school, and the superior judge shall have power to remove such child and place it in the care of some other person who will be likely to send such child to school.

Validity of certificates heretofore granted.

SEC. 84. Nothing in this act shall be construed to invalidate life diplomas or territorial certificates granted under the laws of the Territory of Washington, but the same shall continue in effect the same as life diplomas and state

certificates granted under the provisions of this act, and all county certificates heretofore granted by any county board of examiners shall continue in full force and effect until the expiration thereof, and any contract made in good faith by any teacher, school officer or other person under the provisions of the territorial school law is hereby recognized as a valid contract the same as if made under the provisions of this act.

Teachers of music, languages, drawing and painting.

SEC. 85. Specialists in music, languages, drawing and painting shall not be required to pass a regular teachers' examination: *Provided*, That satisfactory evidence of fitness to teach these branches is furnished to the board of directors.

Penalty for abusing a teacher.

SEC. 86. Any parent, guardian or other person who shall insult or abuse a teacher in the presence of the school, or anywhere on the school grounds or premises, shall be deemed guilty of a misdemeanor, and liable to a fine of not less than ten dollars nor more than one hundred dollars.

Disturbance.

SEC. 87. Any person who shall wilfully disturb any school or school meeting shall be deemed guilty of a misdemeanor, and upon conviction be fined in any sum not less than fifty dollars.

Duty of auditor.

SEC. 88. It shall be the duty of the county auditor to notify the superintendent of public instruction of the election of the county superintendent, or of his appointment to fill a vacancy, at the time said election or appointment is ascertained.

Fines and penalties.

SEC. 89. All fines, penalties and forfeitures provided by this act may be recovered by action of debt, in the name of the people of the State of Washington, for the use of the proper school district or county, and shall, when they accrue, belong to the respective districts or counties in which the same may have been incurred; and the county treasurers for their counties are hereby authorized to receive and cause to be placed to the proper credit such forfeitures. Except as otherwise provided by law, all sums of money derived from fines imposed for violations of orders of injunction, mandamus, and other like writs, or for contempt of court, shall be paid into the school fund of the county wherein the contempt or such violation

was committed, and the clear proceeds of all fines collected within the several counties of the state for breach of the penal laws, and all funds arising from the sale of lost goods and estrays, shall be paid over in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued, and shall be by him credited to the general county school fund. He shall indicate in such entry the source from which such money was derived.

Penalty for neglect or failure to pay over moneys from fines.

Any officer or person collecting or receiving any such fines, forfeitures or other moneys, and refusing or failing to pay over the same, as required by law, shall forfeit double the amount so withheld, and interest thereon at the rate of five per cent. per month during the time of so withholding the same; and it shall be a special duty of the county superintendent of schools to supervise and see that the provisions of this section are fully complied with, and report thereon to the county commissioners semi-annually, or oftener.

Complaints for violation of law.

SEC. 90. Upon complaint, in writing, being made to any county superintendent by any district clerk, or by any head of family, that the board of directors of the district of which said clerk shall hold his office, or said head of family shall reside, have failed to make provision for the teaching of hygiene, with special reference to the effects of alcoholic drink, stimulants and narcotics upon the human system, as provided in this act, in the common schools of

Duty of county superintendent.

such district, it shall be the duty of such county superintendent to at once investigate the matter of such complaints, and if found to be true he shall immediately notify the county treasurer of the county in which such school district is located, and after the receipt of such

Duty of treasurer.

notice it shall be the duty of such county treasurer to refuse to pay any warrants drawn upon him by the board of directors of such district subsequent to the date of such notice, and until he shall be notified to do so by such county superintendent. Whenever it shall be made to appear to the said county superintendent, and he shall be satisfied, that the board of directors of such district are complying with the provisions of said section of this act,

and are causing physiology and hygiene to be taught in the public schools of such district as hereinbefore provided, he shall notify said county treasurer, and said treasurer shall thereupon honor the warrants of said board of directors.

Penalty for failure or neglect.

SEC. 91. Any county superintendent of common schools who shall fail or refuse to comply with the provisions of the preceding section shall be liable to a penalty of one hundred dollars, to be recovered in a civil action in the name of the state in any court of competent jurisdiction, and the sum recovered shall go into the common school fund of the county in which suit is brought, and it shall be the duty of the prosecuting attorneys of the several counties of the state to see that the provisions of this section are enforced.

Qualified repealing clause.

SEC. 92. All acts and parts of acts upon any subject matter contained in this act shall be and the same are hereby repealed: *Providing*, That nothing herein contained shall repeal or in any wise affect any law passed, or which may be passed, during the present session of the legislature, relating to schools in cities having a population of ten thousand and upwards.

Emergency clause.

SEC. 93. Whereas, many new conditions exist with regard to the common schools of the state, and the appointment and confirmation of the members of the board of education, and the first meeting of said board, requires the immediate taking effect of this act; therefore, an emergency is declared to exist, and this act shall take effect and be in force from and after its passage and approval by the governor.

Approved March 27, 1890.

TAB 07

CHAPTER 133.

[House Bill No. 979.]

PROPERTY TAX—LEVIES FOR SUPPORT OF COMMON SCHOOLS.

AN ACT relating to revenue and taxation; creating new sections; amending section 84.52.050, chapter 15, Laws of 1961 as amended by section 1, chapter 143, Laws of 1961 and RCW 84.52.050; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

Property tax—Levies for support of common schools, 1967, 1968.

Section 1. In each of the years 1967 and 1968 the state shall levy for collection in 1968 and 1969 respectively for the support of common schools of the state a tax of two mills upon the assessed valuation of all taxable property within the state adjusted to fifty percent of true and fair value of such property in money in accordance with the ratio fixed by the state department of revenue. Such levy shall be in addition to the levy of two mills for public assistance purposes as provided in RCW 74.04.150.

Disposition of proceeds.

Sec. 2. All property taxes levied by the state for the support of common schools shall be paid into the general fund of the state treasury as provided in RCW 84.56.280.

RCW 84.52.050 amended.

Sec. 3. Section 84.52.050, chapter 15, Laws of 1961 as amended by section 1, chapter 143, Laws of 1961 and RCW 84.52.050 are each amended to read as follows:

Limitation on taxation—Allocation of millage.

Except as hereinafter provided, the aggregate of all tax levies upon real and personal property by the state, municipal corporations, taxing districts and governmental agencies, now existing or hereafter created, shall not in any year exceed forty mills on the dollar of assessed valuation, which assessed valuation shall be fifty percent of the true and fair value of such property in money; and within and subject to the aforesaid limitation the levy by the

state shall not exceed two mills to be used exclusively for the public assistance program of the state; the levy by any county shall not exceed eight mills; the levy by or for any school district shall not exceed fourteen mills: *Provided,* That, in each of the years 1967 and 1968 the state shall levy a property tax of four mills of which two mills shall be used exclusively for the public assistance program of the state and of which two mills shall be used exclusively for the support of the common schools; and in such years in which the state shall validly levy a property tax of two mills for the support of the common schools, the levy by or for any school district shall not exceed twelve mills: *Provided further,* That the levy by or for any union high school district shall not exceed two-fifths of the maximum levy permissible for any school district without a vote of the electors thereof and the levy by or for any component district within a union high school district shall not exceed three-fifths of the maximum levy permissible for any school district without a vote of the electors thereof: *Provided further,* That the levy against any nonhigh school district for the high school district fund shall not exceed two-fifths of the maximum levy permissible for any school district without a vote of the electors thereof and the levy by or for any such nonhigh school district shall not exceed the balance of such maximum permissible levy; the levy for any road district shall not exceed ten mills; and the levy by or for any city or town shall not exceed fifteen mills: *Provided further,* That counties of the fifth class and under are hereby authorized to levy from eight to eleven mills for general county purposes and from seven to ten mills for county road purposes if the total levy for both purposes does not exceed eighteen mills: *Provided further,* That counties of the fourth and the ninth class are hereby authorized to

levy nine mills until such time as the junior taxing agencies are utilizing all the millage available to them.

Nothing herein shall prevent levies at the rates provided by existing law by or for any port or power district.

Emergency.

Sec. 4. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House April 27, 1967.

Passed the Senate April 27, 1967.

Approved by the Governor May 10, 1967.

CHAPTER 134.

[Engrossed House Bill No. 8.]

LEGISLATIVE COUNCIL.

AN ACT relating to the legislative council; amending section 2, chapter 36, Laws of 1947, as amended by section 1, chapter 206, Laws of 1955 and RCW 44.24.020; amending section 3, chapter 36, Laws of 1947 and RCW 44.24.030; amending section 4, chapter 36, Laws of 1947 and RCW 44.24.040; amending section 6, chapter 36, Laws of 1947, as last amended by section 2, chapter 206, Laws of 1955 and RCW 44.24.060; and amending section 7, chapter 36, Laws of 1947, as amended by section 3, chapter 206, Laws of 1955 and RCW 44.24.070; and amending section 1, chapter 36, Laws of 1947, as amended by section 1, chapter 148, Laws of 1965 extraordinary session and RCW 44.24.010.

Be it enacted by the Legislature of the State of Washington:

RCW 44.24.020 amended.

Section 1. Section 2, chapter 36, Laws of 1947, as amended by section 1, chapter 206, Laws of 1955, and RCW 44.24.020 are each amended to read as follows:

TAB 08

THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, et al., Respondent/Cross-Appellant, v. STATE OF WASHINGTON, Appellant/Cross-Respondent.	)	**ORDER** Supreme Court No. 84362-7 King County No. 07-2-02323-2 SEA

This matter came before the court on its July 11, 2012, En Banc Conference. In its decision in this case, the court held that the State is not currently meeting its duty under article IX, section 1 of the Washington State Constitution to make ample provision for the education of all children in the State. McCleary v. State, 173 Wn.2d 477, 539, 269 P.3d 227 (2012). The court recognized the legislature's enactment of "a promising reform program in [Laws of 2009, ch. 548] ESHB 2261," id. at 543, designed to remedy the deficiencies in the prior funding system by 2018. The court retained jurisdiction "to monitor implementation of the reforms under ESHB 2261, and more generally, the State's compliance with its paramount duty." The court directed the parties to provide further briefing addressing the preferred method for retaining jurisdiction. Having considered the parties' arguments, and being fully advised in this matter, the court enters the following order:

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1. The State, through the Legislative Joint Select Committee on Article IX Litigation or through legal counsel, shall file periodic reports in this case summarizing its actions taken towards implementing the reforms initiated by Laws of 2009, ch. 548 (ESHB 2261) and achieving compliance with Washington Constitution article IX, section 1, as directed by this court in McCleary v. State, 173 Wn.2d 477, 269 P.3d 227 (2012).

2. The first report shall be filed no later than 60 days following entry of this order. Thereafter, reports shall be submitted (a) at the conclusion of each legislative session from 2013 through 2018 inclusive, within 60 days after the final biennial or supplemental operating budget is signed by the governor, and (b) at such other times as the court may order. After the filing of the initial report, subsequent reports should summarize legislative actions taken since the filing of the previous report.

3. A copy of each report shall be filed with the court and served on the respondents' counsel. The report shall be a public document and may be published on the legislature's web page. Within 30 days after receiving a copy of the report, the respondents may file and serve written comments addressing the adequacy of the State's implementation of reforms and its progress toward compliance with article IX, section 1.

4. In deference to ESHB 2261 and its implementation schedule, the court's review will focus on whether the actions taken by the legislature show real and measurable progress toward achieving full compliance with article IX, section 1 by 2018. While it is not realistic to measure the steps taken in each legislative session between 2012 and 2018 against full constitutional compliance, the State must demonstrate steady progress according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261.

5. Upon reviewing the parties' submissions, the court will determine whether to request additional information, direct further fact-finding by the trial court or a special master, or take other appropriate steps.

DATED at Olympia, Washington this 18th day of July, 2012.

For the Court,

Madsen, C.J.
CHIEF JUSTICE

TAB 09

THE SUPREME COURT OF WASHINGTON

MATHEW and STEPHANIE McCLEARY, et al.,

Respondent/Cross-Appellant,

v.

STATE OF WASHINGTON,

Appellant/Cross-Respondent.

ORDER

Supreme Court No. 84362-7

King County No. 07-2-02323-2 SEA

This matter came before the court on its December 6, 2012, en banc conference following the parties' submissions in response to this court's July 18, 2012 order. *See* Report to the Washington State Supreme Court by the Joint Select Committee on Article IX Litigation; Pl./Resp'ts' 2012 Post-Budget Filing. The question before us is whether, in remedying the constitutional violation of the State's paramount duty under article IX, section 1, current actions "demonstrate steady progress according to the schedule anticipated by the enactment of the program of reforms in ESHB 2261." Wash. Supreme Court Order (July 18, 2012) at 3 (Order). Consistent with ESHB 2261, 61st Leg., Reg. Sess. (Wash. 2009), such progress must be both "real and measurable" and must be designed to achieve "full compliance with article IX, section 1 by 2018." *Id.*

The State's first report falls short. The report details some of the same history set out in this court's opinion, *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), and it identifies committees in place and the funding task force's assignment. But, the report does not

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sufficiently indicate how full compliance with article IX, section 1 will be achieved. Indeed, since the passage of ESHB 2261 in 2009, significant cuts to education funding have been made. Some of these cuts have been partially restored, but the overall level of funding remains below the levels that have been declared constitutionally inadequate.

Steady progress requires forward movement. Slowing the pace of funding cuts is necessary, but it does not equate to forward progress; constitutional compliance will never be achieved by making modest funding restorations to spending cuts.

It continues to be the court's intention to foster cooperation and defer to the legislature's chosen plan to achieve constitutional compliance. *See McCleary*, 173 Wn.2d at 541-42, 546. But, there must in fact be a plan. Each day there is a delay risks another school year in which Washington children are denied the constitutionally adequate education that is the State's paramount duty to provide.

Year 2018 remains a firm deadline for full constitutional compliance. Whether this is achieved by getting on track with the implementation schedule anticipated in ESHB 2261 or whether it is achieved by equivalent measures, it is incumbent upon the State to lay out a detailed plan and then adhere to it. The upcoming legislative session provides the opportunity for the State to do so. While the State's first report to the court identified the standing committees that have been formed and the additional studies that have been undertaken, the second report must identify the fruits of these labors.

Accordingly, by majority, it is hereby ordered: the report submitted at the conclusion of the 2013 legislative session must set out the State's plan in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018. It should indicate the

phase-in plan for achieving the State's mandate to fully fund basic education and demonstrate that its budget meets its plan. The phase-in plan should address all areas of K-12 education identified in ESHB 2261, including transportation, MSOCs (Materials, Supplies, Other Operating Costs), full time kindergarten, and class size reduction. Given the scale of the task at hand, 2018 is only a moment away—and by the time the 2013 legislature convenes a full year will have passed since the court issued its opinion in this case.[1]

In education, student progress is measured by yearly benchmarks according to essential academic goals and requirements. The State should expect no less of itself than of its students. Requiring the legislature to meet periodic benchmarks does not interfere with its prerogative to enact the reforms it believes best serve Washington's education system. To the contrary, legislative benchmarks help guide judicial review. We cannot wait until "graduation" in 2018 to determine if the State has met minimum constitutional standards.

IT IS SO ORDERED.

DATED at Olympia, Washington this 20th day of December, 2012.

For the Court,

Madsen, C.J.
CHIEF JUSTICE

[1] On a minor point, the State's 2013 postbudget report and any response should be filed as a pleading with the court. This case remains open and it is important that all communications between the parties and the court be part of the open court file.

No. 84362-7

J.M. JOHNSON, J. (dissenting)—Today's order clearly violates two important provisions of our constitution: the separation of powers and the explicit delegation of education to the legislature. This order purports to control the Washington State Legislature and its funding for education until 2018. The order ultimately impairs the implementation of newly designed best available education techniques for our school children. I dissent.

SEPARATION OF POWERS

This case was originally brought as a declaratory action alleging that the State was violating the Washington State Constitution by failing to adequately fund the K-12 school system.[1] RCW 7.24.010 authorizes Washington courts to declare rights, status, and other legal relationships under declaratory judgment actions. Here, the majority actually orders the legislature to take certain specific actions by

[1] *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012).

a specified date, which sounds more in mandamus than declaratory judgment. It also disregards the multitudinal facets of a budget.

A writ of mandamus is used "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled . . . ." RCW 7.16.160. Although this court has limited authority to issue writs of mandamus, it seldom controls state officers, much less the legislature. Furthermore, "such a court order must be justified as an extraordinary remedy." *SEIU Healthcare 775NW v. Gregoire*, 168 Wn.2d 593, 598-99, 229 P.3d 774 (2010) (denying mandamus).

As the remedy lies in equity, courts must exercise judicial discretion to issue the writ. *Id.* at 601. "'[W]hen directing a writ to the Legislature or its officers, a coordinate, equal branch of government, the judiciary should be especially careful not to infringe on the historical and constitutional rights of that branch.'" *Brown v. Owen*, 165 Wn.2d 706, 718, 206 P.3d 310 (2009) (quoting *Walker v. Munro*, 124 Wn.2d 402, 407, 879 P.2d 920 (1994)).

Here, the court is issuing what appears to be a writ of mandamus without calling it by its proper name or justifying it as an extraordinary remedy. Further, writs of mandamus must be directed at an "inferior tribunal, corporation, board or

person." RCW 7.16.160. The legislature is separate and equal, not an "inferior . . . board." *Id.*

The majority's order directs the legislature to create a specific educational plan by the end of the 2013 legislative session with further steps to 2018. Considering that the new legislators have not yet been sworn in, and the body to which we are issuing this direction is consequently not even in existence, the order is improper. At the least, the new legislature should be allowed to consider the issue, in good faith, without this court's orders held to its head.

The Washington State Constitution does not express its separation of powers. "'Nonetheless, the very division of our government into different branches has been presumed throughout our state's history to give rise to a vital separation of powers doctrine.'" *Brown*, 165 Wn.2d at 718 (quoting *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173 (1994)). The separation of powers doctrine exists "to ensure that the fundamental functions of each branch remain inviolate." *Carrick*, 125 Wn.2d at 135.

We have recognized that "[t]he spirit of reciprocity and interdependence requires that if checks by one branch undermine the operation of another branch or undermine the rule of law which all branches are committed to maintain, those checks are improper and destructive exercises of the authority." *In re Salary of*

Juvenile Director, 87 Wn.2d 232, 243, 552 P.2d 163 (1976). Today's order is precisely that—a destructive exercise of authority. Effects on other state funded programs, such as those for the needy, are disregarded. The extensive history of educational studies and reform described in *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), illustrates the legislature's comparative advantage at identifying policy goals and implementing them.[2] Although the majority in *McCleary* claimed that this court would not "dictat[e] the precise means by which the State must discharge its duty,"[3] today's order no doubt contemplates this court's future assessment of the merits of the legislature's benchmarks, as well as the contents of its plan.[4] Because we are isolated from the legislative mechanisms

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[2] Examples of such studies and reforms include the Washington Basic Education Act of 1977 (LAWS OF 1977, 1st Ex. Sess., ch. 359), the Levy Lid Act of 1977 (LAWS OF 1977, 1st Ex. Sess., ch. 325), the Remediation Assistance Act (LAWS OF 1979, ch. 149), the Transitional Bilingual Instruction Act of 1979 (LAWS OF 1979, ch. 95), the Education for All Act of 1971 (LAWS OF 1971, 1st Ex. Sess., ch. 66), the Governor's Council on Education Reform and Funding, the Commission on Student Learning, ESHB 1209, the development of EALRs and the Washington Assessment of Student Learning, the Washington Learns study, E2SSB 5841, the Transportation Funding study, the Basic Education Finance Task Force, E2SSB 5627, the creation of the Quality Education Council, and SHB 2776. *McCleary*, 173 Wn.2d at 486-510. A recent example of how educational reforms are constantly evolving is the announcement of Washington State Superintendent of Public Instruction Randy Dorn's proposal to reduce five required testing areas down to three. Press Release, State of Washington Office of Superintendant of Public Instruction, Dorn Proposes Changes in State Assessment System (Dec. 13, 2012), http://www.k12.wa.us/Communications/PressReleases2012/DornProposesChanges-Assessment.aspx (last visited Dec. 18, 2012).

[3] 173 Wn.2d at 541.

[4] The order appears to be predicated on the misinformation that more funding is the solution to all problems in education. American students' recent scores on 12th grade National Assessment of Educational Progress (NAEP) tests highlight the mediocrity in K-12 schools. Matthew Ladner et

for gathering public input, such as hearings and committees, courts are undeniably unsuited to decide these policy judgments.

WASHINGTON STATE CONSTITUTION ARTICLE IX, SECTION 2

The constitution enshrines in article IX, section 2 that "[t]he legislature shall provide for a general and uniform system of public schools." This is supported both by statewide representation in the legislature and by the legislature's control over the budget. Today's order is a clear usurpation of the legislature's constitutionally mandated duty.

Judges sometimes have delusions of grandeur. Our decision-making deals with thousands of criminal and civil cases through one model. Our state constitution allows other major problems to be resolved through elected representatives from the entire state. This includes the committee process, two houses, a governor, and the use of initiatives and referenda as prods.

The United States Supreme Court has long recognized "that judicial inquiries into legislative or executive motivation represent a substantial intrusion

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al., *Report Card on American Education* 4 (16th ed. 2010). For example, only 23 percent of 12th graders scored "'Proficient'" in math (39 percent scored "'below Basic'"). *Id.* Similarly, only 35 percent of 12th graders scored "Proficient" in reading. *Id.* Nationally, per student annual expenditures have increased from $4,060 in 1970 to $9,266 in 2006 (in constant 2007 dollars). *Id.* at 8. Meanwhile, NAEP scores have remained fairly constant and high school graduation rates have dropped slightly. *Id.* What this means is that United States taxpayers are paying more than double per student than they were 40 years ago without seeing any measurable increases in educational outcomes.

into the workings of other branches of government." *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 268 n.18, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977). We should accordingly presume that legislators act in good faith in discharging their constitutional duties. In *McCleary*, the majority clarified the legislature's duty under article IX, section 1 of the Washington State Constitution and expressed that we expect to see full implementation of educational reforms. 173 Wn.2d at 547. Because I would continue to presume that the legislature will act in good faith in implementing these reforms, this order oversteps the bounds of proper judicial action.

I agree with and signed Chief Justice Madsen's concurrence/dissent in *McCleary*, in which she expressed that "[w]e have done our job; now we must defer to the legislature for implementation." *Id.* at 548 (Madsen, C.J., concurring/dissenting). For this reason, I respectfully dissent.

TAB 10

THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, et al.,	)	**ORDER**
Respondents/Cross-Appellants,	)	Supreme Court No. 84362-7
v.	)	
STATE OF WASHINGTON,	)	King County No. 07-2-02323-2 SEA
Appellant/Cross-Respondent.	)	

The Washington Constitution imposes only one "paramount duty" upon the State: "to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex." WASH. CONST. art. IX, § 1. In *McCleary v. State*, 173 Wn.2d 477, 269 P.3d 227 (2012), we held that the State's program of basic education violated this provision. We declined, however, to impose an immediate remedy, recognizing the legislature's enactment of "a promising reform program in [Laws of 2009, ch. 548] ESHB 2261," *id.* at 543, designed to remedy the deficiencies in the prior funding system by 2018. The court retained jurisdiction "to monitor implementation of the reforms under ESHB 2261, and more generally, the State's compliance with its paramount duty."

Since then, we have repeatedly ordered the State to provide its plan to fully comply with article IX, section 1 by the 2018 deadline. The State has repeatedly failed to do so, offering various explanations as to why. Last Fall, we found the State in contempt of court, but held in abeyance the matter of sanctions until the completion of the 2015 legislative session. After the close of that session and following multiple special sessions, the State still has offered no plan for achieving full constitutional compliance by the deadline the legislature itself adopted.

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Accordingly, this court must take immediate action to enforce its orders. Effective today, the court imposes a $100,000 per day penalty on the State for each day it remains in violation of this court's order of January 9, 2014. As explained below, this penalty may be abated in part if a special session is called and results in achieving full compliance.

How Washington Got to This Point

In *McCleary*, 173 Wn.2d at 520, we held that the State's "paramount duty" under article IX, section 1 is of first and highest priority, requiring fulfillment before any other State program or operation. This duty not only obligates the State to act in amply providing for public education, it also confers upon the children of the state the right to be amply provided with an education. *Seattle Sch. Dist. 1 v. State*, 90 Wn.2d 476, 513, 585 P.2d 71 (1978). And while we recognized that the legislature enjoys broad discretion in deciding what is necessary to deliver the constitutionally required basic education, we emphasized that any program the legislature establishes must be fully and sufficiently funded from regular and dependable State, not local, revenue sources. *McCleary*, 173 Wn.2d at 526-28. The court deferred to the legislature's chosen means of discharging its constitutional duty, but it retained jurisdiction over the case to monitor the State's progress in implementing the reforms that the legislature had recently adopted by the 2018 deadline that the legislature itself had established. Pursuant to its retention of jurisdiction, the court called for periodic reports from the State on its progress. Following the State's first report in 2012, the court issued an order directing the State to lay out its plan "in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018," noting that it must indicate the "phase-in plan for achieving the State's mandate to fully fund basic education and demonstrate that its budget meets its plan." Order, *McCleary v. State*, No. 84362-7, at 2-3 (Wash. Dec 20, 2012).

Following the 2013 legislative session, the Joint Select Committee on Article IX Litigation (Committee) issued the second of these reports, on the basis of which the court found in a January 9, 2014, order (as it had after the Committee's first report) that the State was not demonstrating sufficient progress to be on target to fully fund education reforms by the 2017-18 school year. In that order, the court noted specifically that funding appeared to remain inadequate for student transportation, and that the legislature had made no significant progress toward fully funding essential materials, supplies, and operating costs (MSOCs). Further, the court stressed the need for adequate capital expenditures to ensure implementation of all-day kindergarten and early elementary class size reductions. And finally, the court determined that the State's latest report fell short on personnel costs. Stressing, as it had in its opinion in *McCleary*, that quality educators and administrators are the heart of Washington's education system, the court noted that the latest report "skim[med] over the fact that state funding of educator and administrative staff salaries remains constitutionally inadequate." Order, *McCleary v. State*, No. 84362-7, at 6-7 (Wash. Jan. 9, 2014). Overall, the court observed, the State's report showed that it knew what progress looked like and had taken some steps forward, but it could not "realistically claim to have made significant progress when its own analysis shows that it is not on target to implement ESHB 2261 and SHB 2776 by the 2017-18 school year." *Id.* at 7. Reiterating that the State had to show through immediate and concrete action that it was achieving real and measurable progress, not simply making promises, the court in its order directed the State to submit by April 30, 2014, "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year," addressing "each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB, and must include a phase-in schedule for fully funding each of the components of basic education." *Id.* at 8.

After the 2014 legislative session, the Committee issued its report to the court, acknowledging that the legislature "did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order." REPORT TO THE WASHINGTON STATE SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION at 27 (May 1, 2014) (corrected version). In light of this concession, the court issued an order on June 12, 2014, directing the State to appear before the court and show cause why it should not be held in contempt for violating the court's January 2014 order and why, if it is found in contempt, sanctions or other relief requested by the plaintiffs in this case should not be granted.

Following a hearing on September 3, 2014, the court issued an order on September 11, 2014, finding the State in contempt for failing to comply with the court's January 9, 2014, order. But the court held any sanctions or other remedial measures in abeyance to allow the State the chance to comply with the January 2014 order during the 2015 legislative session. The court directed that if by the end of that session the State had not purged the contempt, the court would reconvene to impose sanctions and other remedial measures as necessary. The court further directed the State to file a memorandum after adjournment of the 2015 session explaining why sanctions or other remedial measures should not be imposed if the State remained in contempt. When the legislature failed to enact a budget for the 2015-17 biennium by the end of the regular session, the court held sanctions further in abeyance until the final adjournment of the legislature after any special session. At a third special session, the legislature adopted a 2015-17 biennial budget that included funding for basic education, and at the court's direction, the State submitted its annual post-budget report to the court on July 27, 2015.

The State Still Has Not Adopted a Plan to Meet Article IX, Section 1 by 2018

It is evident that the 2015-17 general budget makes significant progress in some key areas, for which the legislature is to be commended. The budget appears to provide full funding for transportation, and the superintendent of public instruction agrees. Further, it meets the per-student expenditure goals of SHB 2776 for MSOCs during the 2015-17 biennium in accordance with the prototypical school model established by ESHB 2261. The budget also makes progress in establishing voluntary all-day kindergarten, appropriating $179.8 million, which the State asserts will result in the establishment of all-day kindergarten in all schools by the 2016-17 school year, one year ahead of the schedule specified by SHB 2776. *See* RCW 28A.150.315(1). In addition, the current budget appropriates $350 million for K-3 class size reduction, an amount the State says will achieve the target average class size of 17 for kindergarten and first grade in lower income schools by the 2016-17 school year.

But while there is some progress in class size reduction, there is far to go. The target for all of K-3 is an average of 17 students, RCW 28A.150.260(4)(b), but low-income schools will reach only 18 students in the second grade and 21 in the third by 2016-17. And in other schools, no class will reach the goal of 17 by 2016-17. With a deadline of 2018 for compliance, the State is not on course to meet class-size reduction goals by then. The appropriation of $350 million for the 2015-17 biennium is considerable, but the legislature's own Joint Task Force on Education Funding (JTTEF) estimated in 2012 that $662.8 million would be needed this biennium for K-3 class size reduction, and that the 2017-18 biennium would require an expenditure of $1.15 billion. The State has presented no plan as to how it intends to achieve full compliance in this area by 2018, other than the promise that it will take up the matter in the 2017-19 biennial budget.

And as to both class size reductions and all-day kindergarten, it is unclear, and the State does not expressly say, whether the general budget or the capital budget makes sufficient capital outlays to ensure that classrooms will be available for full implementation of all-day kindergarten and reduced class sizes by 2018. The State indicates that the legislature allocated $200 million for grants devoted to K-3 class size reduction and all-day kindergarten, but as this court noted in its January 2014 order, the superintendent of public instruction had previously estimated that additional capital expenditures of $599 million would be needed just for K-3 class size reductions. The State has provided no plan for how it intends to pay for the facilities needed for all-day kindergarten and reduced class sizes. As the court emphasized in its January 2014 order, the State needs to account for the actual cost to schools of providing all-day kindergarten and smaller K-3 class sizes. It has not done so. Furthermore, in its latest report the Joint Select Committee notes an analysis estimating that there will be a shortage of about 4,000 teachers in 2017-18 for all-day kindergarten and class size reduction. It says nothing in the report about how that shortfall will be made up and what it will cost. Report at 16.

This leads to the matter of personnel costs, for which the State has wholly failed to offer any plan for achieving constitutional compliance. As this court discussed in *McCleary*, a major component of the State's deficiency in meeting its constitutional obligation is its consistent underfunding of the actual cost of recruiting and retaining competent teachers, administrators, and staff. *McCleary*, 173 Wn.2d at 536. The court specifically identified this area in its January 2014 order as one in which the State continues to fall short, finding it an "inescapable fact" that "salaries for educators in Washington are no better now than when this case went to trial." Order (Jan. 9, 2014) at 6. The legislature in ESHB 2261 recognized that "continuing to attract and retain the highest quality educators will require increased investment," and it established a technical work

group, which issued its final report and recommendations in 2012. ESHB 2261 § 601(1). The State is correct that it is not constitutionally required to adopt precisely those recommendations, but it must do something in the matter of compensation that will achieve full *state* funding of public education salaries. In the current budget, the legislature approved modest salary increases (across state government) and fully funded Initiative 732 cost of living increases (which had long been suspended), and it provided some benefit increases; but the State has offered no plan for achieving a sustained, fully state-funded system that will attract and retain the educators necessary to actually deliver a quality education.

The State devotes the bulk of its latest report to detailing proposed legislation on salaries and levy reform considered during the 2015 legislative session, and the State urges that "sophisticated efforts toward that goal already are underway." *See* State of Washington's Memorandum Transmitting the Legislature's 2015 Post-Budget Report, at 30. But the bottom line is that none of these proposals was enacted into law, and they remain, in the State's words, only matters of "discussion." We have, in other words, further promises, not concrete plans.[1]

As to all of these matters, the court emphasizes, as it has throughout these proceedings, that it will not dictate the details of how the State is to achieve full funding of basic education, nor has the court required that full funding be achieved in advance of the 2018 deadline. It is not within

[1] The State contends that the matter of salaries must be tied to reform of the local levy system, making this a particularly complex matter requiring time and study and discussion. Local levy reform is not part of the court's January 9, 2014, order, though in *McCleary* the court was critical of the use of local levy funds to make up for shortfalls caused by the State's failure to pay the full cost of staff salaries, and it determined that the State may not constitutionally rely on local levies to pay for basic education generally. *McCleary*, 173 Wn.2d at 536-39. We offer no opinion on whether full state funding of basic education salaries must be accompanied by levy reform, but how the State achieves full state funding is up to the legislature. And we note that the State has had ample time to deal with this matter, not just since *McCleary* but well before. *See Seattle Sch. Dist. 1*, 90 Wn.2d at 525-26 (holding unconstitutional the use of special excess local levies to fund basic education).

this court's authority to enact legislation, appropriate state funds, or levy taxes. Rather, in accordance with its obligation to enforce the commands of the Washington Constitution, and pursuant to its continuing jurisdiction over this matter to ensure steady progress towards constitutional compliance, the court has only required, and still requires, the State to present its *plan* for achieving compliance by its own deadline of 2018. The State acknowledges that it has not submitted a written plan listing benchmarks for assessing its progress, as this court has required, but it urges that SHB 2776 constitutes the "plan" and that it is on pace toward fulfilling that plan. But this court's order requires the State to explain not just what it expects to achieve by 2018, as SHB 2776 dictates, but to fully explain *how* it will achieve the required goals, with a phase-in schedule and benchmarks for measuring full compliance with the components of basic education.

Sanctions Are Appropriate For the State's Continued Failure to Comply with Court Orders

Despite repeated opportunities to comply with the court's order to provide an implementation plan, the State has not shown how it will achieve full funding of all elements of basic education by 2018. The State therefore remains in contempt of this court's order of January 9, 2014. The State urges the court to hold off on imposing sanctions, to wait and see if the State achieves full compliance by the 2018 deadline. But time is simply too short for the court to be assured that, without the impetus of sanctions, the State will timely meet its constitutional obligations. There has been uneven progress to date, and the reality is that 2018 is less than a full budget cycle away. As this court emphasized in its original order in this matter, "we cannot wait until 'graduation' in 2018 to determine if the State has met minimum constitutional standards." Order of December 20, 2012 at p.3

The court has inherent power to impose remedial sanctions when contempt consists of the failure to perform an act ordered by the court that is yet within the power of a party to perform.

Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 423, 63 P.2d 397 (1936) ("The power of a court, created by the constitution, to punish for contempt for disobedience of its mandates, is inherent. The power comes into being upon the very creation of such a court and remains with it as long as the court exists. Without such power, the court could ill exercise any power, for it would then be nothing more than a mere advisory body."). *See also In re Dependency of A.K.*, 162 Wn.2d 632, 645, 174 P.3d 11 (2007). Monetary sanctions are among the proper remedial sanctions to impose, though the court also may issue any order designed to ensure compliance with a prior order of the court. When, as here, contempt results in an ongoing constitutional violation, sanctions are an important part of securing the promise that a court order embodies: the promise that a constitutional violation will not go unremedied.

Given the gravity of the State's ongoing violation of its constitutional obligation to amply provide for public education, and in light of the need for expeditious action, the time has come for the court to impose sanctions. A monetary sanction is appropriate to emphasize the cost to the children, indeed to all of the people of this state, for every day the State fails to adopt a plan for full compliance with article IX, section 1. At the same time, this sanction is less intrusive than other available options, including directing the means the State must use to come into compliance with the court's order.

Now, therefore, it is hereby

ORDERED:

Effective immediately, the State of Washington is assessed a remedial penalty of one-hundred thousand dollars ($100,000) per day until it adopts a complete plan for complying with article IX, section 1 by the 2018 school year. The penalty shall be payable daily to be held in a

segregated account for the benefit of basic education. Recognizing that legislative action complying with the court's order can only occur in session, but further recognizing that the court has no authority to convene a special session, the court encourages the governor to aid in resolving this matter by calling a special session. Should the legislature hold a special session and during that session fully comply with the court's order, the court will vacate any penalties accruing during the session. Otherwise, penalties will continue to accrue until the State achieves compliance.

As it has since the constitutionality of Washington's school funding system was first litigated in *Seattle School District*, the court assumes and expects that the other branches of government will comply in good faith with orders of the court issued pursuant to the court's constitutional duties. *Seattle Sch. Dist. 1*, 90 Wn.2d at 506-07. Our country has a proud tradition of having the executive branch aid in enforcing court orders vindicating constitutional rights.

DATED at Olympia, Washington this 13th day of August, 2015.

Madsen, C.J.
CHIEF JUSTICE

Wiggins, J.

González, J.

McCloud, J.

Yu, J.

Fairhurst, J.

Stephens, J.

TAB 11

THE SUPREME COURT OF WASHINGTON

MATHEW & STEPHANIE McCLEARY, et al.,	)	**ORDER**
Respondents/Cross-Appellants,	)	Supreme Court No. 84362-7
v.	)	
STATE OF WASHINGTON,	)	King County No. 07-2-02323-2 SEA
Appellant/Cross-Respondent.	)	

Following the 2016 legislative session, the State through the Joint Select Committee on Article IX Litigation (Joint Select Committee) filed its annual postbudget report on its progress toward achieving full compliance with its paramount duty to amply fund public education under article IX, section 1 of the Washington Constitution, also addressing the State's compliance with the court's order of January 9, 2014, requiring it to provide a complete plan for achieving full compliance by 2018, and whether the State is no longer in contempt of that order, as the court had previously found it to be. This order is in response to the State's latest report.

Background

In *McCleary v. State*, we held that the State's "paramount duty" under article IX, section 1 is of first and highest priority, requiring fulfillment before any other State program or operation. 173 Wn.2d 477, 520, 269 P.3d 227 (2012). This duty not only obligates the State to act in amply providing for public education, but also confers on the children of the state the right to be amply provided with an education. *Seattle Sch. Dist. No. 1 v. State*, 90 Wn.2d 476, 513, 585 P.2d 71 (1978). And while we recognized that the legislature enjoys broad discretion in deciding what is necessary to deliver the constitutionally required basic education, we

emphasized that to satisfy the State's obligation to make "ample" provision for basic education, any program the legislature establishes must be fully and sufficiently funded from regular and dependable state, not local, revenue sources, a requirement that the court found the State was not meeting. *McCleary*, 173 Wn.2d at 484, 527-29. The court deferred to the legislature's chosen means of discharging its constitutional duty, but it retained jurisdiction over the case to monitor the State's progress in implementing the reforms that the legislature had recently adopted. The legislature itself established the deadline of 2018. Pursuant to its retention of jurisdiction, the court called for periodic reports from the State on its progress. Following the State's first report in 2012, the court issued an order finding the State was not demonstrating sufficient progress to fully fund education reforms by 2018 and directing the State to provide the court with a "phase-in plan for achieving the State's mandate to fully fund basic education and demonstrate that its budget meets its plan." Order, *McCleary v. State*, No. 84362-7, at 2-3 (Wash. Dec. 20, 2012). The court directed that the plan be laid out "in sufficient detail to allow progress to be measured according to periodic benchmarks between now and 2018," and it specified that the plan address all areas of basic education identified in Engrossed Substitute H.B. 2261, 61st Leg., Reg. Sess. (Wash. 2009) (ESHB 2261). *Id.*

Following the 2013 legislative session, the Joint Select Committee issued the second of these reports. Based on the second report, the court again found in a January 9, 2014, order that the State was not demonstrating sufficient progress to be on target to fully fund education reforms by 2018. Order, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014). In that order, the court noted specifically that funding appeared to remain inadequate for student transportation and that the legislature had made no significant progress toward fully funding essential materials, supplies, and operating costs (MSOCs). *Id.* at 3-5. Further, the court stressed the need for adequate

capital expenditures to ensure implementation of all-day kindergarten and early elementary class size reductions. *Id.* at 4-5. Finally, the court determined that the State's latest report fell short on personnel costs. *Id.* at 5-6. Stressing, as it had in *McCleary*, that quality educators and administrators are the heart of Washington's education system, the court noted that the latest report "skim[med] over the fact that state funding of educator and administrative staff salaries remains constitutionally inadequate." *Id.* Overall, the court observed, the State's report showed that it knew what progress looked like and had taken some steps forward, but it could not "realistically claim to have made significant progress when its own analysis shows that it is not on target to implement ESHB 2261 and SHB 2776 [Substitute H.B. 2776, 61st Leg., Reg. Sess. (Wash. 2010)]." *Id.* at 6. Reiterating that the State had to show through immediate and concrete action that it was achieving real and measurable progress, not simply making promises, the court directed the State to submit by April 30, 2014, "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-18 school year," which addresses "each of the areas of K-12 education identified in ESHB 2261, as well as the implementation plan called for by SHB 2776, and must include a phase-in schedule for fully funding each of the components of basic education." *Id.* at 8. From this order and from the decision in *McCleary* itself, it was plain and clear that any plan for meeting the State's obligation had to show how the State intended make "ample provision" for basic education through regular and dependable state revenue sources.

After the 2014 legislative session, the Joint Select Committee issued its third report to the court, acknowledging that the legislature "did not enact additional timelines in 2014 to implement the program of basic education as directed by the Court in its January 2014 Order." REPORT TO THE WASHINGTON STATE SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION at 27 (May 1, 2014) (corrected version). The report included summaries of legislation

that had been proposed, but not enacted, addressing revenue sources for public education. In light of the State's concession, the court directed the State to appear before the court and show cause why it should not be held in contempt for violating the court's January 2014 order and why, if it was found in contempt, sanctions or other relief requested by the plaintiffs in this case should not be granted.

Following a hearing, the court issued an order on September 11, 2014, finding the State in contempt for failing to comply with the court's January 9, 2014, order. The court held in abeyance any sanctions or other remedial measures to allow the State the chance to comply with the January 2014 order during the 2015 legislative session. The court directed that if by the end of that session the State had not purged the contempt, the court would reconvene to impose sanctions and other remedial measures as necessary. At a third special session in 2015, the legislature adopted a 2015-17 biennial budget that included some funding for basic education. At the court's direction, the State submitted its annual postbudget report to the court.

The court subsequently determined that the legislature had made significant progress in appropriating sufficient funds to key areas and appeared to have even achieved full funding of some components of basic education, including transportation, MSOCs, and all-day kindergarten. But the State's progress lagged in other areas, and it still had not submitted a complete plan demonstrating it was on track to achieve full state funding of basic education by 2018. While the court noted progress in the area of K-3 class size reductions, it found no assurance that that component of basic education would be fully achieved by the deadline. Further, the court noted that the Joint Select Committee's third report referred to an analysis estimating a shortage of about 4,000 teachers in 2017-18 for all-day kindergarten and class size reduction, yet the report said nothing about how that shortfall will be made up and what it will cost.

The court then turned more specifically to the subject of personnel costs, finding that the State had wholly failed to offer any plan for achieving constitutional compliance. As this court had discussed in *McCleary*, a major component of the State's deficiency in meeting its constitutional obligation is its consistent underfunding of the actual cost of recruiting and retaining competent teachers, administrators, and staff. *McCleary*, 173 Wn.2d at 536. The court specifically identified this area in its January 2014 order as one in which the State continued to fall short. Order (Jan. 9, 2014) at 6. When the legislature enacted ESHB 2261, it recognized that "continuing to attract and retain the highest quality educators will require increased investments," and it established a technical work group, which issued its final report and recommendations in 2012. ESHB 2261 at 57; LAWS OF 2009, ch. 548, § 601. In its 2015-17 budget, the State neither adopted nor offered any plan for achieving a sustained, fully state-funded system that will attract and retain the educators necessary to actually deliver a constitutionally adequate program of basic education. The legislature approved only modest salary increases (across state government) and Initiative 732 cost of living increases (which had long been suspended), as well as provided for some benefit increases. LAWS OF 2001, ch. 4.

Again, the State has failed to offer any plan on how it would fully fund basic education through regular and dependable revenue sources, instead offering, as it had before, a laundry list of bills that were considered but not enacted.

As a result of the State's failure to purge its contempt by presenting a complete plan for full funding of basic education by 2018, the court on August 13, 2015, imposed a monetary sanction of $100,000 per day to be deposited into a segregated account for the benefit of public education. The governor did not immediately call a special session in response to the sanction but convened a work group of legislators for the purpose of attempting to reach a consensus by November 19,

2015, that would justify calling a special session. Evidently, no consensus was reached, and the governor did not call a special session. The next time the legislature convened was at its regular 2016 supplemental budget session.

The 2016 Legislative Session

It is mainly on the matter of compensation that the legislature took some action during the 2016 session, enacting, besides the supplemental budget itself, one piece of relevant legislation, Engrossed Second Substitute S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016) (E2SSB 6195). LAWS OF 2016, ch. 3. In that enactment, the legislature states it is "fully committed to funding its program of basic education . . . and eliminating school district dependency on local levies for implementation of the state's program of basic education," and it expresses its intent "to provide state funding for competitive salaries and benefits that are sufficient to hire and retain competent certificated instructional staff, administrators, and classified staff." *Id.* § 1. The legislation goes on to describe the difficulty of gathering complete data due to the lack of transparency within school districts about how local levy funds are used, and it relates the need for "foundational data" concerning compensation that districts pay above basic salary allocations for the statutory prototypical school model; the source of funding for this compensation; and the duties, uses, or categories for which such compensation is paid. *Id.*

To the end of gathering this information and formulating recommendations, E2SSB 6195 established an "Education Funding Task Force." To assist the task force in this job, the legislation directs the hiring of an independent consultant to conduct the following tasks:

> (a) Collect K-12 public school staff total compensation data, and within that data, provide an analysis of compensation paid in addition to basic education salary allocations under the statutory prototypical school model, source of funding, and the duties, uses, or categories for which that compensation is paid;
>
> (b) Identify market rate salaries that are comparable to each of the staff types in the prototypical school funding model; and

> (c) Provide analysis regarding whether a local labor market adjustment formula should be implemented and if so which market adjustment factors and methods should be used.

Id. § 3(1). The superintendent of public instruction must collect, and school districts must provide, compensation data necessary to accomplish the consultant's task in time for the consultant to provide an interim report to the task force and the governor by September 1, 2016, and final data and analysis by November 15, 2016. *Id.* § 3(2)-(4). Based on this information, the task force must then at a minimum make recommendations for compensation "sufficient to hire and retain the staff funded under the prototypical school funding model and an associated salary allocation model." *Id.* § 2(2). The recommendations must also include provisions on whether a system for future salary adjustments should be incorporated into the salary allocation model and the method for providing such adjustments, and a local labor market adjustment formula, with considerations for rural and remote districts and economically distressed districts where challenges to recruitment and retention exist. *Id.* Further, the task force must determine whether additional legislation is needed to support state-funded all-day kindergarten and K-3 class size reductions, and it must make recommendations for improving or expanding existing educator recruitment and retention programs. *Id.* § 2(3)-(4). Finally, the task force must make recommendations on the following matters: (1) local maintenance and operation levies and local effort assistance, (2) local school district collective bargaining, (3) clarification of the distinction between services provided as part of the state's statutory program of basic education and services that may be provided as local enrichment, (4) necessary district reporting, accounting, and transparency of data and expenditures, (5) provision and funding method for school employee health benefits, and (6) sources of state revenue to support the state's statutory program of basic education. *Id.* § 2(5). The task force must submit its recommendations and proposed legislation by January 9, 2017, and the legislature promises that "[l]egislative action shall be taken by the

end of the 2017 session to eliminate school district dependency on local levies for implementation of the state's program of basic education." *Id.* §§ 2(11), 4.

The supplemental budget bill enacted during the 2016 session similarly states that the legislature confirms its obligation to provide state funding during the 2017 session for competitive staff compensation while eliminating school district dependency on local levies to implement basic education. SECOND ENGROSSED SUBSTITUTE H.B. 2376, at 235, 64th Leg., 1st Spec. Sess. (Wash. 2016). The budget bill also provides that, to facilitate school districts' budget and personnel planning for the 2017-18 school year, the task force must either determine by April 1, 2017, that the legislature will meet its full funding obligation by April 30, 2017, or introduce legislation that extends the current state levy policy for one year with the objective of enacting such legislation by April 30, 2017. *Id.*

Following the 2016 session, the Joint Select Committee submitted its postbudget report and the parties submitted briefs. Pursuant to an order issued on July 14, 2016, the parties appeared before the court for oral argument on September 7, 2016, to answer specific questions that the court posed in its July 14 order.

The State's Compliance

The State urges that ESHB 2261 and SHB 2776, with the addition of E2SSB 6195, constitutes the "plan" this court required in its January 2014 order, and the State asserts that it is on pace toward fulfilling that plan. But consistently throughout these proceedings, the court has required the State to explain not just what it expects to achieve by the 2018 deadline (it has done that), but to set forth in complete detail *how* it will achieve its identified goals. This includes specifically how it will fully *pay for* basic education through regular and dependable revenue sources, since the State can comply with its constitutional obligation only if sufficient funds are

available from such sources, as this court first held nearly four decades ago. *Seattle Sch. Dist.*, 90 Wn.2d at 522. In *McCleary*, this court determined that ESHB 2261 constituted a promising reform package that *if* fully funded will remedy deficiencies in the funding system, but it held that the State had not made the necessary expenditures or complied with its obligation to provide ample funding by means of dependable and regular tax sources. 173 Wn.2d at 484. The court has never directed the State to fully fund everything at once, but neither has it suggested that it is sufficient simply to specify each year how much the State has appropriated for each component of basic education and how much it hopes to appropriate in the future. Rather, the court has required the State to demonstrate to the court how it intends to succeed by 2018 in implementing and sustaining ample state funding of basic education consistent with its constitutional obligation.

The State's actions confirm it is fully aware of its constitutional obligation and understands that it must explain how it intends to fund basic education with dependable revenue sources. The Joint Task Force on Education Funding that the legislature established in 2012 recognized that it had been assigned "the task of developing a proposal for a reliable and dependable funding mechanism to support basic education." JOINT TASK FORCE ON EDUCATION FUNDING FINAL REPORT at 2 (Dec. 2012) (FINAL REPORT); *see* LAWS OF 2012, 1st Spec. Sess., ch. 10, § 2. And in its report, the Task Force in fact proposed numerous funding options. FINAL REPORT, *supra*, at 5-7. As indicated, the legislature in sessions since then has considered various funding proposals but has not enacted any of them, and the State has yearly reported on proposed funding legislation, but it has yet to explain how it plans to fully fund basic education through dependable and regular revenue sources. Further, the State early on (in ESHB 2261) commissioned a study to develop recommendations for full state funding of basic education salaries, and the Compensation Technical Working Group issued a detailed report in June 2012. But again, in the years since, the

legislature has not acted on the recommendations of the report or explained how it intends to fully fund basic education salaries. The State has thus known all along what a plan on *how* to constitutionally achieve full state funding of basic education looks like; it has simply not provided a complete plan, nor has it acted on any of the recommendations suggested through the years concerning funding sources and compensation.

In its latest report, the State continues to provide a promise—"we'll get there next year"—rather than a concrete plan for how it will meet its paramount duty. It forestalls taking action while awaiting the recommendations of its latest task force. In terms of demonstrating measurable progress, the State's 2016 report offers no more than the previous reports the court has determined fell short. Following the 2014 legislative session, for instance, the State acknowledged it had not enacted additional timelines to implement the program of basic education as this court had directed in its January 2014 order, and it recognized that "the upcoming biennial budget developed in the 2015 legislative session must address how the targets will be met," characterizing that session as "the next and most critical year for the Legislature to reach the grand agreement needed to meet the state's Article IX duty by the statutorily scheduled full implementation date of 2018." 2014 REPORT TO THE WASHINGTON SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION 32-33 (corrected version) (May 1, 2014). This court found the State in contempt, but held sanctions in abeyance because the State pledged to reach the "grand agreement" in 2015. It failed to do so. Particularly with respect to funding sources and salaries, the 2015 legislature did not address funding sources at all and it assured as to the latter only that the legislature was "engaged in serious and ongoing discussion about how to assume state responsibility for costs of basic education salaries." State of Wash.'s Mem. Transmitting Legislature's 2015 Post-Budget Report at 13. It had spent much time "grappling" with the issue but again offered no plan and

reported only on legislation that had been considered but not passed. *Id.* at 13, 22-23; *see* 2015 REPORT TO THE WASHINGTON SUPREME COURT BY THE JOINT SELECT COMMITTEE ON ARTICLE IX LITIGATION 13-34 (July 2015). With 2016 came further "grappling" but essentially a return to 2012, with the commissioning of another study to come up with recommended options, a host of which were available to the legislature in the 2012 reports but were neither acted on nor committed to by plan. While the State insists in its latest report that it is on schedule to comply with the 2018 deadline, it does not demonstrate how. A pledge, regardless of good intentions, is still not a plan for achieving full constitutional compliance.

The court emphasizes that it is not judging whether the State has appropriated sufficient funds to fully pay for the components of basic education. The order of contempt is based on the State's failure to demonstrate steady and measurable progress and to provide a complete plan; the sufficiency of specific appropriations cannot be evaluated until the State has completed its task.

The court recognizes that the legislature has committed itself in E2SSB 6195 to satisfying the State's paramount duty by the end of the 2017 legislative session. The court recognizes that at this point, the legislature cannot realistically determine the appropriations necessary for full funding of basic education, including salaries, without the updated data that the current task force is charged with gathering and presenting. And the court acknowledges that the task force's report will contain concrete recommendations, including recommendations for funding sources. But as explained, a call for further study and recommendations does not constitute a plan demonstrating how the State will meet its constitutional obligation. The State therefore remains in contempt of the January 9, 2014, order. The State acknowledged at oral argument that the finding of contempt and the resulting monetary sanction at least spurred the legislature to take action in the 2016 session, committing itself to complete its task by the end of the 2017 session and setting up a process aimed

at doing so. The court believes this to be true and that therefore the finding of contempt and the sanction still have coercive force and should remain in place.

Further supporting the continuation of sanctions is the State's failure to comply with the sanction order itself. The court in its order directed that the $100,000 penalty "shall be payable daily to be held in a segregated account for the benefit of basic education." Order, *McCleary v. State*, No. 84362-7, at 9-10 (Wash. Aug. 13, 2015). The State acknowledges that since the issuance of the order, the legislature has neither established a segregated account for the benefit of education nor appropriated any funds to be paid into such an account in accordance with the court's order. The State urges that sufficient reserve state funds exist to cover the sanctions that have accumulated to date, and it represents that the Office of Financial Management is computing the accumulated amount on a daily basis and reporting weekly to the legislature and the state treasurer. But keeping an accounting of the sanctions as they accumulate does not comply with the court's order to pay the sanction daily into an established account for the benefit of basic education.

Finally, the question has arisen as to the deadline for the State's full compliance with its constitutional duty. The legislature in ESHB 2261 established the Quality Education Council and directed it to recommend a phase-in schedule for the program of basic education that "shall have full implementation completed by September 1, 2018." LAWS OF 2009, ch. 548, § 114(5)(b)(iii). Any program for full state funding of basic education must therefore be fully implemented not later than September 1, 2018.[1] But in E2SSB 6195, the legislature committed itself to *enacting* a

[1] Plaintiffs note that in its 2016 session, the legislature repealed the statute that had created the Quality Education Council. *See* LAWS OF 2016, ch. 162, § 5(1). But that legislation eliminated the council only going forward. The original statute called for the council to submit its recommendations, including its recommended phase-in schedule, by January 1, 2010, which it

fully complying program by the end of the 2017 session. This court has never purported to alter the compliance deadline. We conclude, based on the relevant legislation, that the State has until September 1, 2018, to fully implement its program of basic education, and that the remaining details of that program, including funding sources and the necessary appropriations for the 2017-19 biennium, are to be in place by final adjournment of the 2017 legislative session.

Now, therefore, it is hereby

ORDERED:

(1) The monetary sanction of $100,000 per day shall remain in place and continue to accrue until the State purges its contempt by adopting a complete legislative plan demonstrating how it will fully comply with article IX, section 1 of the Washington Constitution by September 1, 2018. Sanctions shall be paid into a segregated account for the benefit of basic education.

(2) In accordance with the court's order of July 18, 2012, the State through the legislative Joint Select Committee on Article IX Litigation shall file and serve on plaintiffs' counsel its report summarizing the actions taken during the 2017 session to implement the State's program of basic education. The State shall also file and serve a brief addressing the adequacy of its compliance with constitutional requirements. The report and brief shall be filed within 30 days after the final biennial operating budget is signed by the governor. Within 30 days after receipt of the report and the State's brief, plaintiffs may file and serve a brief addressing the report and answering the State's brief.

(3) Upon reviewing the parties' submissions, the court will determine what, if any, additional actions to take.

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did. *See McCleary*, 173 Wn.2d at 508. The fact that the legislature has since disbanded the council does not alter the phase-in schedule that the council recommended at the legislature's direction.

DATED at Olympia, Washington this 6th day of October, 2016.

Madsen, C.J.

WE CONCUR:

Johnson, J.

Owens, J.

González, J.

Fairhurst, J.

Stephens, J.

Gordon McCloud, J.

No. 91934-8

WIGGINS, J. (concurring)—I respectfully concur in the order insofar as the continuation of contempt is based on the State's failure to pay the $100,000 per day sanction and hold the accumulated sanction in a segregated account for the benefit of basic education.

No. 91934-8

I agree with the majority that the State has made "significant progress in appropriating sufficient funds to key areas and appear[s] to have even achieved full funding of some components of basic education, including transportation, [materials, supplies, and operating costs], and all-day kindergarten." Majority at 4. I further agree with the majority and, indeed, with the State, that the State's progress—on these components and on its duty to provide a "plan" for full compliance—was due in large part to our court's orders. The State's own lawyer said as much during the September 7, 2016, hearing before our court, when he acknowledged that *the sanctions did work*. *McCleary v. State*, No. 84362-7 (Sept. 17, 2016), at 14 min., 54 sec., *audio recording by* TVW, Washington State's Public Affairs Network, http://www.tvw.org.[1]

[1] The State's lawyer agreed that those sanctions motivated the legislature to develop the Engrossed Second Substitute S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016) "plan" and the Governor to convene the meetings that led to the enactment of that bill. Wash. Supreme Court oral argument, *supra*, at 14 min., 54 sec.; *accord* majority at 11 (concluding that the sanctions have been partially effective, having "at least spurred the legislature to take

This is a critically important acknowledgement. It implicitly admits that our 2014 order for a "plan"; our later September 11, 2014, order finding that the State contemptuously failed to produce such a "plan";[2] and our following August 13, 2015, order imposing sanctions for continued failure to produce that "plan"[3] were all clearly within this court's power to coerce compliance. In other words, these orders were lawful, constitutional, and properly coercive. Wash. Supreme Court oral argument, *supra*, at 14 min., 54 sec.

I diverge from the majority solely on whether that contempt has now been purged and whether those sanctions should now be lifted.

To address that issue, we have to start with the applicable legal rules. The applicable legal rules are that a court can hold a party in contempt for failure to comply with a specific order of that court,[4] and that the court can order civil sanctions for the sole purpose of coercing compliance with its specific order.[5]

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action in the 2016 session, committing itself to compete its task by the end of the 2017 session and setting up a process aimed at doing so").

[2] Order, *McCleary v. State*, No. 84362-7, at 4 (Wash. Sept. 11, 2014).

[3] Order, *McCleary v. State*, No. 84362-7, at 9 (Wash. Aug. 13, 2015).

[4] *See Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974).

[5] *In re Pers. Restraint of King*, 110 Wn.2d 793, 800, 756 P.2d 1303 (1988) ("the purpose of a civil contempt sanction is to coerce future behavior that complies with a court order"); *United States v. Lippitt*, 180 F.3d 873, 876-78 (7th Cir. 1999) (civil contempt

Our unanimous decision to impose sanctions complied with that rule to the letter. We imposed sanctions on the State because it failed to comply with one specific order: our January 9, 2014, order directing the State to produce a "plan." Order, *McCleary v. State*, No. 84362-7 (Wash. Jan. 9, 2014).

Today, we continue to follow those rules. We therefore measure the sufficiency of Engrossed Second Substitute S.B. 6195, 64th Leg., Reg. Sess. (Wash. 2016) (E2SSB 6195) as a "plan" against the specific language of that January 9, 2014, order, the violation of which justified our imposition of sanctions.

The majority concludes that this 2014 order was "plain and clear" in directing the legislature to produce a "plan" that identified the precise source of education funding. Majority at 3.

I have reviewed the same materials, and I come to a different conclusion. I read our January 9, 2014, order as requiring a plan with many parts—but specifying the precise source of education funding in advance of the 2018 deadline was not one of them. I believe that the majority has incorrectly conflated the requirements of the January 9, 2014, order with the requirements of the 2012 *McCleary* decision itself. Majority at 3 ("[f]rom this order and from the decision in *McCleary* itself, it was

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sanction "is designed primarily to coerce the contemnor into complying with the court's demands").

plain and clear that any plan for meeting the State's obligation had to show how the State intended to make 'ample provision' for basic education through regular and dependable state revenue sources"); *see McCleary v. State*, 173 Wn.2d 477, 546-47, 269 P.3d 227 (2012) ("[t]he legislature must develop a basic education program geared toward delivering the constitutionally required education, and it must fully fund that program through regular and dependable tax sources").

The January 9, 2014, order alone, in contrast, provided only a brief description of the "plan" required. The majority acknowledges this in a different portion of its opinion. Majority at 3 (quoting Order, *McCleary v. State*, No. 84362-7, at 8 (Wash. Jan. 9, 2014)). That 2014 order directed the State to provide "a complete plan for fully implementing its program of basic education for each school year between now and the 2017-2018 school year." Order, *McCleary*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). It described that plan in a single sentence: "This plan must address each of the areas of K-12 education identified in [Engrossed Substitute H.B. 2261, 61st Leg., Reg. Sess. (Wash. 2009)], as well as the implementation plan called for by [Substitute H.B. 2776, 61st Leg., Reg. Sess. (Wash. 2010)], and must include a phase-in schedule for fully funding each of the components of basic education." *Id.* Nothing in this language clearly directs the legislature to identify the specific source of the revenue it will use to fund basic education in this "plan."

I therefore agree completely with the majority's holding that E2SSB 6195 failed to identify a specific (or even a general) source of funding. But I disagree that this constitutes a fatal defect when measured against the January 9, 2014, order. And, as the majority acknowledges, E2SSB 6195 does create an education task force whose mandate is to make recommendations, based on necessary recent data and on a specific timeline, regarding a number of education-related issues, including "[s]ources of state revenue to support the state's statutory program of basic education." LAWS OF 2016, ch. 3, § 2(f). Most significantly, it also commits the legislature to "action . . . by the end of the 2017 session to eliminate school district dependency on local levies for implementation of the state's program of basic education." *Id.* § 4.

I certainly acknowledge reasonable minds might differ as to whether E2SSB 6195 constitutes the "phase-in schedule for full[] funding" described in our January 9, 2014, order. Order, *McCleary*, No. 84362-7, at 8 (Wash. Jan. 9, 2014). But ambiguities in our order must be construed in favor of the contemnor, not the court. *See Schmidt v. Lessard*, 414 U.S. 473, 476, 94 S. Ct. 713, 38 L. Ed. 2d 661 (1974) (federal rule requiring specificity in injunctions necessary because "basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed").

The majority's contrary conclusion amounts to continuing sanctions for the purpose of showing the State that we are serious about the 2018 deadline for full compliance. As discussed above, that is an impermissible purpose.

We should therefore lift the sanctions that were imposed to coerce compliance with our January 9, 2014, order at this time.

TAB 12

Wash. AGO 1975 NO. 1 (Wash.A.G.), 1975 WL 165890

Office of the Attorney General

State of Washington
AGO 1975 No. 1
January 8, 1975

OFFICES AND OFFICERS -- STATE -- SUPERINTENDENT OF PUBLIC INSTRUCTION -- STATE BOARD OF EDUCATION -- SCHOOL DISTRICTS -- DISCRIMINATION -- EMPLOYMENT.

***1** (1) Neither the superintendent of public instruction nor the state board of education has the authority under any existing statute or constitutional provision to formulate and implement a state-wide [[statewide]]affirmative or corrective action policy for disadvantaged groups such as women or racial minorities which would be binding on all local school districts in their employment of personnel; under the supervisory authority granted to him by Article III, § 23 of the state constitution, however, the state superintendent of public instruction may require local school districts, in connection with their employment of personnel, to formulate and implement their own affirmative action policies for such disadvantaged groups, subject to such constitutional standards as may be applicable to those kinds of programs.

(2) Such a requirement may be enforced by a mandamus action against any noncomplying school districts.

(3) The state superintendent of public instruction has the authority to enforce federal affirmative action programs by refusing to disburse federal funds to noncomplying school districts.

Honorable Lorraine Wojahn
State Representative
27th District
3592 East "K" Street
Tacoma, Washington 98404

Dear Representative Wojahn:
By letter previously acknowledged you asked for our opinion on several questions pertaining to the powers of the state superintendent of public instruction and state board of education. We paraphrase those questions as follows:

(1) Do either the superintendent of public instruction or the state board of education have the authority to require local school districts, in connection with their employment of personnel, to formulate and implement affirmative or corrective action policies for disadvantaged groups such as women or racial minorities?

(2) If this first question is answerable in the affirmative, what legal means of enforcing such a requirement are available to either of these agencies?

(3) Does the superintendent of public instruction have the authority to enforce federal affirmative action programs by refusing to disburse federal funds to noncomplying districts?

We answer questions (1) and (3) in the qualified affirmative; and question (2) as set forth in our analysis.

ANALYSIS

Question (1):

Affirmative action programs are a fairly recent development, and are designed to correct past patterns of discrimination in, among other things, employment. The state human rights commission has adopted rules and regulations for the implementation of such programs, and is encouraging voluntary participation by employers in cases where affirmative action policies are appropriate. See, WAC chapter 162-18. The legal rationale for such rules and regulations is that, in cases where there has been a pattern of discrimination in the past, factors such as age, sex, race, creed, color or national origin may be considered in order to correct a condition of unequal employment opportunity. Accord, WAC 162-18-020 and 162-18-030. In cases where an affirmative action program is deemed proper, these human rights commission rules further provide for avoidance of conflict with chapter 49.60 RCW, the law against discrimination, by allowing for recognition of race, creed, color, national origin, age or sex as a "bona fide occupational qualification" thus bringing the case within the exception to RCW 49.60.180(1), which allows for discrimination upon the above-listed grounds where those factors constitute such a qualification. See, WAC 162-18-090.

*2 Insofar as the constitutionality of affirmative action policies is concerned, we find a similar expression of legal rationale in the seven-judge majority opinion in DeFunis v. Odegaard, 82 Wn.2d 11, 29, 30, 507 P.2d 1169 (1973). In upholding an affirmative action program related to the admission of students to the University of Washington Law School, Justice Neill, in writing that opinion, stated that:
"... the constitution is color conscious to prevent the perpetuation of discrimination and to undo the effects of past segregation....

"...

"Clearly, consideration of race by school authorities does not violate the Fourteenth Amendment where the purpose is to bring together, rather than separate, the races...."

Although it is true that the court's decision in that case has since been ordered vacated by the United States Supreme Court on the ground of mootness, [1] it is not thereby to be deemed to have been overturned on its merits. Furthermore, as far as our own state supreme court is concerned, it appears to us that even though less than a majority favored reinstating the court's earlier judgment upon remand from the United States Supreme Court, the underlying concept of affirmative action is still supported by at least five if not more of the present nine members of our court - given a factual justification such as that which the majority earlier found to exist with respect to the law school admissions policy upon which the court earlier ruled with favor. [2]

For the purposes of this opinion, therefore, we will proceed from that premise without here attempting to pass upon the constitutional validity of any given affirmative action programs which might be adopted by a particular school district in accordance with the views hereinafter set forth. In other words, we will here assume that the program in question is one that conforms to the standards of constitutionality which were deemed by the court in DeFunis, supra, to be applicable to such programs if they are to be upheld, and, from that starting point, proceed to pass upon your question from the standpoint, specifically, of the authority of the state superintendent of public instruction.

RCW 28A.58.100, a part of the state education code, provides that:
"Every board of directors, unless otherwise specifically provided by law, shall:

"(1) Employ for not more than one year, and for sufficient cause discharge all certificated and noncertificated employees,..."

Under this statute there can be no doubt that a given school board may establish reasonable employment policies - including such corrective or affirmative action policies as are constitutionally permissible under the DeFunis test as above explained and qualified. The basic issue to be considered, however, is whether either the superintendent of public instruction or the state board of education has the authority under existing law to require those local districts throughout the state to do so - as opposed to

their individual formulation and implementation of such programs at the discretion of each school district acting through its own board of directors.

*3 As you know, both the superintendent of public instruction and the state board of education are state agencies and are, therefore, limited to the exercise of those powers granted by the state constitution or by the legislature. That is, they may exercise only those powers expressly granted to them by these sources, those necessarily or fairly implied or incident to the powers thus granted, and those essential to the declared objects and purposes of such agencies. State ex rel. Eastvold v. Maybury, 49 Wn.2d 533, 304 P.2d 663 (1956); State ex rel. Holcomb v. Armstrong, 39 Wn.2d 860, 239 P.2d 545 (1952).

Under RCW 28A.58.101, every local school board is required to:

> "(1) Enforce the rules and regulations prescribed by the superintendent of public instruction and the state board of education for the government of schools, pupils, and certificated employees."

Likewise, RCW 28A.58.110 provides that:
"Every board of directors shall have power to make such bylaws for their own government, and the government of the common schools under their charge, as they deem expedient, not inconsistent with the provisions of this title, or rules and regulations of the superintendent of public instruction or the state board of education." (Emphasis supplied.)

Thus, presumably, any directive by either the state superintendent or state board of education would, in order to be effective, have to be in the form of a rule or regulation that would spell out the kinds of action to be required of all local districts in relation to their employment practices. With this in mind, we have initially keyed our research in the preparation of this opinion to an examination of all existing statutes which currently contain express authority for either of these agencies to adopt and promulgate rules of one kind or another pertaining to the activities of local school districts; and, following through on this approach, we have requested and obtained from the state code reviser's office a computer search of all possible sources of such authority.

Although both the state superintendent and the state board of education have on numerous occasions been granted rulemaking powers by the legislature, none of the statutes granting these powers relate to, or purport to provide for the regulation of, any of the employment or hiring practices of local school boards acting under RCW 28A.58.100, supra. Instead, those involving the state superintendent, insofar as they empower him to adopt regulations governing such boards or their districts, cover such matters as the design and operation of school buses (RCW 46.61.380), the design of school buildings (RCW 28A.04.310), the operation of programs for handicapped children (RCW 28A.13.010), budgeting procedures (RCW 28A.65.180), libraries (RCW 28A.58.104), various funding programs (e.g., RCW 28A.34.020 regarding the funding of nursery schools) and a myriad of other matters not touching upon employment practices. In the case of the state board, existing statutes authorize it to regulate with respect to the conduct of mandatory studies of the state and federal constitutions (RCW 28A.02.080), the establishment of secondary programs in nonhigh districts (RCW 28A.04.120(5)), the extension of substantive and procedural due process to pupils (RCW 28A.04.132), the designation of compulsory courses (RCW 28A.05.010), the operation of nursery schools (RCW 28A.34.020) and programs for superior students (RCW 28A.16.020), the processing of applications for school plant facilities financial aid (RCW 28A.47.060, et seq.) and the eligibility of prospective and current professional employees for certification (RCW 28A.70.005). Certification is, of course, a condition to employment (RCW 28A.67.010), but is not controlling with respect to a school district's discretionary decision as to which certificated individuals it shall employ.

*4 Within this entire body of existing statutes authorizing the adoption of rules and regulations there is only one which, although not expressly referring to employment practices, could, conceivably, reach this topic. RCW 28A.04.120(6), dealing with the state board of education, broadly authorizes it to

> "... prescribe such rules for the general government of the common schools, as shall seek to secure regularity of attendance, prevent truancy, secure efficiency, and promote the true interest of the common schools."

We would, however, be most reluctant to place much weight on this provision insofar as the regulation of employment policies is concerned, except to the extent that the state board might legitimately find it necessary to require a particular practice in order to achieve one or more of the objectives stated therein. While it might be possible, within a given school district, that an affirmative action program for the employment of teachers or other personnel would bear an appropriate relationship to one of these objectives, we doubt that this could properly be said without exception in the case of all such districts so as to afford authority for the kind of rule or regulation apparently visualized by your request.

Thus, in summary at this juncture, we do not find in any existing statutes which can be read as authorizing either the state superintendent or board of education to adopt rules or regulations to require all local school districts to formulate and implement such affirmative action programs as you have in mind. There is, however, another possible source of authority to be explored; namely, Article III, § 22 of our state constitution which provides that:

> "The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law...."

In State ex rel. Miller v. Board of Ed. of U. Sch. D. No. 398, Kan., 511 P.2d 705 (1973), the Kansas Supreme Court was concerned with a similar provision of that state's constitution which reads as follows:

> "The legislature shall provide for a state board of education which shall have general supervision of public schools, educational institutions and all the educational interests of the state, except educational functions delegated by law to the state board of regents. The state board of education shall perform such other duties as may be provided by law."

At issue was the authority of the state board of education, under this provision, to have promulgated a rule providing that:

> "'The boards of education of every unified school district and boards of control of every area vocational-technical school in Kansas shall adopt rules which: (a) Govern the conduct of all persons employed by or attending such institutions, and (b) provide specific procedures for their enforcement..."

In passing upon the validity of this rule the court first determined that the constitutional provision under which it was adopted was a self-executing grant of authority to the state board to "supervise" the public schools of Kansas, and then it turned to the meaning to be given to that verb. Interestingly, it found the "case most helpful in getting to the problem" to be an early Washington case, Great Northern Ry. Co. v. Snohomish County, 48 Wash. 478, 93 Pac. 924 (1908), from which it quoted at length as follows:

*5 "What is meant by general supervision? Counsel for respondents contend that it means, to confer with, to advise, and that the board acts in an advisory capacity only. We cannot believe that the legislature went through the idle formality of creating a board thus impotent. Defining the term 'general supervision' in Vantongeren v. Heffernan, 5 Dak. 180, 38 N.W. 52, the court said:

"'The secretary of the interior, and, under his direction, the commissioner of the general land office has a general "supervision over all public business relating to the public lands." What is meant by "supervision?" Webster says supervision means "To oversee for direction; to superintend; to inspect; as to supervise the press for correction." And, used in its general and accepted meaning, the secretary has the power to oversee all the acts of the local officers for their direction; or as illustrated by Mr. Webster, he has the power to supervise their acts for the purpose of correcting the same; and the same power is exercised by the commissioner under the secretary of the interior. It is clear, then, that a fair construction of the statute gives the secretary of the interior, and, under his direction, the commissioner of the general land office the power to review all the acts of the local officers, and to correct, or direct a correction of, any errors committed by them. Any less power than this would make the "supervision" an idle act,--a mere overlooking without power of correction or suggestion.'

"Defining the like term in State v. Fremont etc. R. Co., 22 Neb. 313, 35 N.W. 118, the court said:

"'Webster defines the word "supervision" to be "The act of overseeing; inspection; superintendence." The board therefore, is clothed with the power of overseeing, inspecting and superintending the railways within the state, for the purpose of carrying into effect the provisions of this act, and they are clothed with the power to prevent unjust discriminations against either persons or places.'

"It seems to us that the term 'general supervision' is correctly defined in these cases. Certainly a person or officer who can only advise or suggest to another has no general supervision over him, his acts or his conduct...."

Thereupon, the Kansas court upheld the validity of the state board rule with which it was concerned, as above quoted, saying: "Considering the frame of reference in which the term appears both in the constitution and the statutes, we believe 'supervision' means something more than to advise but something less than to control. The board of regents has such control over institutions of higher learning as the legislature shall ordain, but not so the board of education over public schools; its authority is to supervise. While the line of demarcation lies somewhere between advice and control, we cannot draw the line with fine precision at this point; we merely conclude that the regulation which is the bone of contention between the state and district boards in this case falls within the supervisory power of the state board of education.

***6** "As forcefully pointed out in the brief of amicus, the regulation makes no attempt to prescribe what the rules of conduct shall be or what procedures are to be adopted for enforcing compliance with the rules adopted. As is stated in the brief, 'The content of such rules and regulations was left entirely to the discretion of the local board.'" (Emphasis supplied.)

We have underscored the final paragraph of this quotation because it signifies to us the crux of the matter. It is one thing for a state agency vested with supervisory authority over local governmental bodies to required those bodies to engage in some general course of conduct - there, the adoption by local school districts of their own regulations governing the conduct of their employees and students. It is another for the supervising agency to prescribe the details of what those local regulations shall say.

Applying this same approach to the subject of your present inquiry, it follows by analogy that the state superintendent of public instruction in our state - being possessed by virtue of Article III, § 22, supra, with essentially the same power of supervision as is vested in the Kansas state board of education by that state's constitution - may adopt a rule directing all local school boards in the state to adopt their own regulations with regard to the standards to be followed in employing teachers or other personnel. But, solely in the exercise of his power to supervise, he cannot himself establish those standards. Therefore, in summary, our answer to your first question is as follows:

Neither the superintendent of public instruction nor the state board of education has the authority under any existing statute or constitutional provision to formulate and implement a state-wide [[statewide]]affirmative or corrective action policy for disadvantaged groups such as women or racial minorities which would be binding on all local school districts in their employment of personnel. Under the supervisory authority granted to him by Article III, § 22 of the state constitution, however, the state superintendent of public instruction may require local school districts, in connection with their employment of personnel, to formulate and implement their own individual affirmative or corrective action policies for such disadvantaged groups - subject, as above explained, to such constitutional standards as may be applicable to those kinds of policies or programs.

Question (2):

The foregoing affirmative answer to so much of your first question as visualizes a requirement by the state superintendent for the adoption of individualized local affirmative action programs by all school districts - as distinguished from a single

state-wide [[statewide]]affirmative action policy formulated and implemented by either the state board of education or state superintendent - requires that we consider, next, the legal means that would be available to the state superintendent to enforce such a requirement.

*7 The basic legal remedy which would be available to the state superintendent[3] in the event of noncompliance by a local school district would be a mandamus action under the provisions of chapter 7.16 RCW. In particular, RCW 7.16.160 provides that a writ of mandamus

> "... may be issued by any court, except a justice's or a police court, to any inferior tribunal, corporation, board or person, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person."

A second possible enforcement mechanism which we have considered but largely rejected as being without sufficient existing statutory authority would be that of withholding some form of state financial support from the noncomplying school district. The difficulty with this approach is that without a specific statutory authorization, any such withholding of funds from a school district entitled to their receipt under the applicable statute (e.g., RCW 28A.41.130, the general state apportionment law) would, in all probability, be successfully met by a mandamus action by the district against the state superintendent.

Thirdly, there is the always present but nonlegal remedy of public pressure. Obviously, the state superintendent could bring such pressure to bear upon any noncomplying school district by simply publicizing the facts and, possibly, bringing the situation to the attention of the Washington state human rights commission for investigation by it to see if the noncomplying school district involved might, thereby, be committing unfair practices under the state law against discrimination, chapter 49.60 RCW.

Question (3):

Insofar as your third question is concerned, we are of the opinion that the superintendent of public instruction does have the authority to enforce compliance with federal affirmative action policies, based on the following provisions of RCW 28A.02.100: "The state of Washington and/or any school district is hereby authorized to receive federal funds made or hereafter made available by acts of congress for the assistance of school districts in providing physical facilities and/or maintenance and operation of schools, or for any other educational purpose, according to provisions of such acts, and the state superintendent of public instruction shall represent the state in the receipt and administration of such funds." (Emphasis supplied.)

We read this statute to mean that the superintendent of public instruction is responsible for the receipt and administration of federal funds made available to school districts through the state, and that the funds so received must be used "according to provisions of such acts..." Therefore, to the extent that the authorizing acts of Congress or implementing federal regulations require compliance with the affirmative action policies as a condition to the receipt of such federal funds, it is our opinion that the superintendent of public instruction would have the authority, in his capacity as administrator of those funds, to withhold payment to school districts not in compliance with the federal standards.

*8 We trust that the foregoing will be of some assistance to you.
Very truly yours,

Slade Gorton
Attorney General
Robert E. Patterson
Assistant Attorney General

John R. Pettit
Assistant Attorney General

Footnotes

1 DeFunis v. Odegaard, 416 U.S. 312 (1974).

2 DeFunis v. Odegaard, 84 Wn.2d (December 16, 1974), opinions by Hamilton, J., concurred in by Utter, J., and Stafford, J.; and by Finley, J., fully concurred in by Wright, J.; Hale, C.J., and Hunter, J., dissenting and Rosellini, J., and Brachtenbach, J., not participating with respect to this question.

3 Or, for that matter, to any other person sufficiently affected by the noncompliance to have legal "standing" to sue.

Wash. AGO 1975 NO. 1 (Wash.A.G.), 1975 WL 165890

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TAB 13

Wash. AGO 1998 NO. 6 (Wash.A.G.), 1998 WL 127341

Office of the Attorney General

State of Washington
AGO 1998 No. 6
March 9, 1998

SUPERINTENDENT OF PUBLIC INSTRUCTION - STATE CONSTITUTION - LEGISLATURE - SCHOOLS - EDUCATION - Authority of the Legislature to define powers and duties of the Superintendent of Public Instruction.

***1** 1. The Legislature has discretion to prescribe the specific duties of the Superintendent of Public Instruction and to create agencies and institutions to administer the state's public education system; however, it must respect the constitutional language granting the Superintendent "supervisory" power over the public school system.

2. The public school system, for purposes of defining the constitutional "supervision" authority of the Superintendent of Public Instruction, includes the common school system of elementary, intermediate, and high schools, and would also include normal schools and technical schools if the Legislature were to create any.

3. The Legislature may not "delegate" to another officer or agency the "supervision" authority of the Superintendent of Public Instruction over the public schools; however, with this restriction, the Legislature has broad discretion to create state and local agencies and institutions to administer the public education system, and to define their respective powers and duties.

The Honorable Peggy Johnson
State Representative, 35th District

The Honorable Harold Hochstatter
State Senator, 13th District

Co-Chairs
Joint Select Committee on Education Restructuring
P.O. Box 40600
Olympia, WA 98504-0600

Dear Representative Johnson and Senator Hochstatter:
By letter previously acknowledged, you have requested our opinion on the following questions:

1. Under Article III, Section 22 of the Washington State Constitution, the Superintendent of Public Instruction is charged with "supervision of all matters pertaining to public schools." What grant of authority and responsibility is given to the Superintendent of Public Instruction by the term "supervision" under this section? Does the term "supervision" place limits on the authority of the Superintendent of Public Instruction?

2. Article III, Section 22 of the Washington State Constitution gives the Superintendent of Public Instruction supervision over all matters pertaining to public schools. Article IX, Section 2 defines public schools as including common schools, normal schools and technical schools. What is the scope of authority and responsibility of the Superintendent of Public Instruction for these schools as they exist today?

3. Can the supervisory authority of the Superintendent of Public Instruction under Article III, Section 22 of the State Constitution be delegated?

We answer your questions in the manner indicated below, supplying a brief summary of the answer to each question at the beginning of the Analysis on that question.

BACKGROUND

Your questions are about the interpretation of a clause in the Washington State Constitution. Article III, Section 22 defines the powers and duties of the Superintendent of Public Instruction and reads as follows:

*2 **The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.**

Const. Art. III, § 22. (Emphasis added.) The underscored portions of the section are the basis for your questions.

BRIEF ANSWER

The constitutional language speaks for itself, and would have to be interpreted in light of specific questions. Article III, Section 22 involves three separate elements: (1) a grant of the power of "supervision" to the Superintendent of Public Instruction over whatever "general and uniform" system of public schools the Legislature might establish; (2) a limitation upon the Legislature's power to infringe upon the Superintendent's powers of "supervision"; and (3) a grant of discretion to the Legislature to prescribe specific duties for the Superintendent consistent with the "supervision" language.

ANALYSIS

As you note in your request, our office has considered this question in two formal opinions and in several informal letters and memoranda. In our two previous formal opinions, AGO 1961-62 No. 2 and AGO 1975 No. 1, we did not attempt to define the precise meaning of "supervision," but applied it to specific fact patterns. There is no way to provide an exhaustive definition of a constitutional term which will cover every conceivable issue.

There are constitutional principles to guide us in interpreting the term "supervision." First, it is a cornerstone of constitutional interpretation that the Legislature's discretion is unrestrained except where the state constitution limits that discretion (or where it is pre-empted by the constitution and laws of the United States). The courts have recognized this discretion in several cases. In Moses Lake School District No. 161 v. Big Bend Community College, 81 Wn.2d 551, 503 P.2d 86 (1972), the State Supreme Court upheld the Legislature's action creating a new separate system of community colleges and transferring to the new system the functions and property of certain local school districts. See also, Yelle v. Bishop, 55 Wn.2d 286, 347 P.2d 1081 (1959), upholding an extensive restructuring of the powers and duties of the State Auditor.

Thus, Article III, Section 22 should be read primarily not as a conferral of powers on the Superintendent of Public Instruction but as a limit on the powers of the Legislature to define the Superintendent's duties. Note the rest of the sentence in which the "supervision" clause appears:

The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law.

Const. Art. III, § 22. (Emphasis added.) The "supervision" language appears in the context of a recognition that, insofar as it respects the "supervision" role, the Legislature is quite free to shape the state's education system as it may choose, and to define the Superintendent's role within that system.

*3 We recognized this pattern the first time we considered the "supervision" language in a formal opinion. In AGO 1961-62 No. 2, we concluded that the Legislature could not constitutionally enact a statute making the Superintendent subordinate to the State Board of Education. Such a statute, we found, would deprive the Superintendent of the "supervision" role, because the Superintendent would himself be "supervised" by another agency. Thus, while the Legislature has many choices in structuring the public education system, the Superintendent is entitled to remain the "supervisor" of the system.

Beyond that general formulation, the extent of the meaning of "supervision" would have to be applied to specific ideas or proposals. In the second part of this question, you have asked whether the word "supervision" implies any limitation on the powers which could constitutionally be granted to the Superintendent. We are not aware of any, to the limited extent we can anticipate all the possibilities. In any proposal affecting the role of the Superintendent of Public Instruction, the question to ask is:

Does this proposal place "supervision" of the public system in the hands of the Superintendent of Public Instruction?

If the proposal subordinates the Superintendent to some other officer or body (as discussed in AGO 1961-62 No. 2) or shifts so many responsibilities to other officers or agencies that the Superintendent no longer "supervises" the public school system, the proposal is probably unconstitutional. Otherwise, the Legislature is free to assign specific roles as it thinks best.

2. Article III, Section 22 of the Washington State Constitution gives the Superintendent of Public Instruction supervision over all matters pertaining to public schools. Article IX, Section 2 defines public schools as including common schools, normal schools and technical schools. What is the scope of authority and responsibility of the Superintendent of Public Instruction for these schools as they exist today?

BRIEF ANSWER

The term "public schools" denotes the common school system of primary and secondary education, including such high schools, normal schools, and technical schools as the Legislature may provide. The Constitution does not confer any supervisory power on the Superintendent for the state's higher education system. There are currently no "normal schools" or "technical schools" included within the common school system, although the Legislature could establish such schools.

ANALYSIS

Your second question as phrased breaks into two parts: 1) "What is the nature of the 'supervisory' authority of the Superintendent?" and 2) "What are the 'public schools' over which such authority is to be exercised?" The first part is essentially the same as your Question 1, and we have analyzed that issue above. In this section of the Opinion, we will concentrate on the second part of your second question: defining the institutions that are a part of the common school system.

*4 The term "public schools" is not defined in Article III, but is somewhat clarified by a related provision of the Constitution, Article IX, Section 2:

The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

We note initially that in defining the term "public schools," Article IX, Section 2 does not *require* the Legislature to create high schools, normal schools, or technical schools. The best grammatical reading of the phrase "...as may hereafter be established...," given the sentence in which it appears, is that it modifies "...such high schools, normal schools, and technical schools." Thus, the Legislature must establish and provide for "common schools," but has some choice of what additional types of schools to create as part of the "general and uniform system of public schools."

However, as to high schools, our courts have ruled that as a practical matter, such schools have long been integrated into the public school system, such that they are now a required component of the "public education" which Article IX, Section 1 of the Constitution requires the state to provide. Seattle Sch. Dist. No. 1 v. State, 90 Wn.2d 476, 585 P.2d 71 (1978) (discussion in 90 Wn.2d at 521-522, suggesting that, having established a high school system, the Legislature may lack the authority to disestablish it). The case law thus establishes that high schools are "common schools" and, therefore, are certainly "public schools" as defined both in Article IX, Section 2, and in Article III, Section 22 of the Constitution.

It is also clear from the case law that the state's public colleges and universities are not "public schools" for constitutional purposes. This was established as early as Litchman v. Shannon, 90 Wash. 186, 155 P. 783 (1916), in which the Court found that the University of Washington was not a "public school" and, therefore, was authorized to charge tuition fees for attendance. The Litchman court noted that the University had been established in territorial days and had charged tuition fees before statehood, giving rise to the inference that the drafters of the Constitution knew the University was not "free" and yet did not include any reference to it in the definition of "public schools" contained in Article IX, Section 2. Id., 90 Wash. At 190-191. Since the colleges and universities are not part of the "public schools" for constitutional purposes, it follows that the "supervision" language defining the constitutional role of the Superintendent of Public Instruction does not extend to these institutions of higher education.

Community colleges were originally the thirteenth and fourteenth grades of the common school system. See Laws of 1945, ch. 115, §§ 2 and 5. As such, these schools were originally under the "supervision" of the Superintendent of Public Instruction. In 1967, the Legislature created a state community college system as a post-secondary system of higher education, transferred to the new system any school district assets relating to the thirteenth and fourteenth grades, and authorized community college district boards of trustees to award suitable diplomas, non-baccalaureate degrees, or certificates. See Laws of 1967, ch. 8. The 1967 law was upheld over several constitutional challenges in Moses Lake School District, supra.

***5** Having concluded that elementary, intermediate, and high schools are "public schools" subject to the constitutional "supervision" of the Superintendent of Public Instruction, and having concluded that community and four-year colleges are not "public schools," we turn to a brief discussion of the two other categories mentioned as "public schools" in Article IX, Section 2: normal schools and technical schools.

State-supported normal schools did not exist in Washington before statehood, but the Enabling Act donated one hundred thousand acres of federal land to the state for the support of normal schools. Enabling Act § 17, 25 Stat. 681 (1889). The first Legislature established normal schools at Cheney and at Ellensburg "...to train teachers in the art of instructing and governing in the public schools." Act of Mar. 23, 1890, Laws of 1889-1890, § 1, p. 278. A third normal school, at New Whatcom (later Bellingham) was authorized by the 1895 Legislature. The Superintendent proposed that the general management and courses of training be uniform for the normal schools (11 Washington State Superintendent of Public Instruction Biennial Report 64-65, 289 (1892), and the Legislature concurred by enacting a bill creating uniform entrance requirements, curricula, diplomas, etc. Act of Mar. 10, 1893, Laws of 1893, ch. CVII, §§1-23, p. 254-63.

All of the normal schools were eventually converted to full four-year post-secondary institutions of higher education. All award baccalaureate and graduate degrees. They train teachers but also offer courses in many different areas. The conversion to post-secondary institutions began when the Legislature granted these schools the power to grant a B.A. degree in education for the completion of a four-year course of study. Laws of 1933, ch. 13, § 1. With the conversion of the original normal schools to past-secondary education institutions, there are no remaining "normal schools" in this state, although the Legislature could in theory create more.

Washington has never had any public-supported school called a "technical school." Beale, supra, suggests that the drafters of the Constitution may have been referring to the state agricultural college which had been statutorily authorized in 1865 but was not yet in operation as of statehood. L.K. Beale, *Charter Schools, Common Schools, and the Washington State Constitution,*

72 Wash. L. Rev. 535, p. 558 (1997) Beale points out that the original bill creating what is now Washington State University described it as "State School of Science" to be governed by a "Technical Commission." The bill was later amended to describe the institution as the "...state agricultural college and school of science." H.R. 90, 1st Leg. (1889). Beale, Wash. L. Rev. 535, 558 n. 185. Thus, the final 1889 legislation did not describe the new college as a "technical school," nor did it grant the Superintendent of Public Instruction any "supervision" over the college. Since there were no "technical schools" created either before or at the time of statehood, and since we are aware of no debate or contemporary discussion about the term at the time the Constitution was drafted, we can only speculate that the framers of the Constitution contemplated that the Legislature might wish to create one or more "technical" schools which were distinct both from the "common schools" and from the higher education system. In theory at least, the Legislature still has this option.

*6 To summarize then, the Superintendent of Public Instruction has "supervision" over the elementary, intermediate, and secondary (high) schools of the state, all of which are part of the "common school" system. The Superintendent's "supervision" would theoretically extend also to "normal schools" or "technical schools" which the Legislature might create, but there are no current examples of either category. The Constitution did not place the Superintendent in a "supervision" role with respect to colleges and other post-secondary educational institutions. However, the Legislature remains free to expand the Superintendent's role beyond the constitutional minimum, if it so desires.

3. Can the supervisory authority of the Superintendent of Public Instruction under Article III, Section 22 of the State Constitution be delegated?

BRIEF ANSWER

The answer depends on the meaning of "delegation." Under the traditional meaning of "delegation," the Superintendent may lawfully delegate her constitutional and statutory responsibilities to employees of her agency, who act under standards established by the Superintendent and under her supervision. The Legislature may not "delegate" the Superintendent's "supervision" responsibilities to other officers or agencies. However, the Legislature may restructure the public education system in a variety of ways so long as it respects the "supervision" role of the Superintendent.

ANALYSIS

In your question, you have used the word "delegate." This term most often connotes the conferral by an officer or government body of one or more of the delegating body's *own powers.* The largest body of law concerns delegation by the Legislature of some portion of the legislative power, such as by authorizing administrative agencies to adopt rules which carry the force of law. The issue of delegating legislative power does not appear to be part of your question.

There could also be an issue of the extent to which an executive branch officer (such as the Superintendent of Public Instruction) could delegate her constitutional or statutory duties to others. For instance, in State v. Yelle, 4 Wn.2d 327, 103 P.2d 372 (1940), the Supreme Court held that the State Auditor was not required to personally perform all the duties assigned to him by the law, but could lawfully delegate the performance of audit examinations to deputies and assistants. In McNiece v. Washington State University, 73 Wn. App. 801, 871 P.2d 649 (1994), the Court of Appeals held that the University's Board of Regents had lawfully delegated to a subordinate officer the authority to terminate employees. We have also considered this type of delegation in previous opinions. In AGO 1988 No. 26, we found that a municipal treasurer could not delegate to a bank or financial institution the authority to redeem municipal warrants. In AGO 1987 No. 7, we found that the Higher Education Coordinating Board could not delegate to its executive director the power to adopt rules. In AGLO 1978 No. 35, we decided that the Data Processing Authority could delegate to the Supreme Court the authority to acquire data processing equipment. In each of these cases, the authority to delegate depended on the language of the law setting forth the powers of the delegating officer or agency. A "core" discretionary function, such as the authority to adopt rules, generally cannot be delegated. More general functions, such as personnel decisions and performance of auditor examinations, may be delegated to subordinates where the "delegating" officer retains the ultimate authority. However, absent very specific authority, an officer may not delegate his authority to a

private institution or other party not accountable to the delegating officer. Having stated these very general rules, we suggest that any particular delegation would have to be analyzed with reference to the particular facts and law in question.

*7 From your question, however, it appears you are also asking about the authority of the *Legislature* to "delegate" the constitutional powers of the Superintendent to other officers or agencies. It is of course an elementary principle that the Legislature may not enact statutes which are inconsistent with the Constitution. See, e.g., Gerberding v. Munro, 134 Wn.2d 188, 949 P.2d 1366 (1998). Therefore, the Legislature could not assign to some other agency or officer the "supervision" responsibilities of the Superintendent of Public Instruction over the state's public school system. Such an act would be directly inconsistent with the express language of the Constitution.

However, as we noted in our answer to your first question, the "supervision" language appears in context of a sentence granting the Legislature considerable discretion in assigning the specific powers and duties of the Superintendent. The Constitution provides this test against which any legislation would be analyzed: does this legislation preserve the "supervision" of the Superintendent of Public Instruction over the public schools?

If the answer to the question is "yes," the legislation is consistent with Article III, Section 22, of the Constitution. So long as the "supervision" role of the Superintendent is preserved, the Legislature may create offices and agencies and determine their specific roles and duties in a great variety of ways.

We trust the foregoing will be useful to your Committee.
Very truly yours,

Christine O. Gregoire
James K. Pharris
Sr. Assistant Attorney General

Wash. AGO 1998 NO. 6 (Wash.A.G.), 1998 WL 127341

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TAB 14

Wash. AGO 2009 NO. 8 (Wash.A.G.), 2009 WL 4836912

Office of the Attorney General

State of Washington
AGO 2009 No. 8
December 11, 2009

EDUCATION-PUBLIC SCHOOL SYSTEM-RELIGION-SUPERINTENDENT OF PUBLIC INSTRUCTION-Constitutional Implications Of Adding Early Learning To Statutory Definition Of Basic Education

***1** 1. The Legislature may create a basic education program of early learning that is limited to students who are at risk of educational failure. However, article IX, section 1 of the Washington Constitution would preclude limiting such a program to students from low-income households, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.

2. Public funds may be used for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and if the funds are not used for a religious purpose.

3. An early learning program defined to constitute a component of basic educationmust be supervised by the Superintendent of Public Instruction.

4. If the Legislature defines basic educationto include a program of early learning, but the state lacks facilities to fully implement such a program immediately, the Legislature must establish a plan to overcome or correct such limitations within a reasonable period of time.

5. The Legislature may establish qualifications required for teachers in an early learning program that is incorporated within basic education.

6. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning, except perhaps where the absence of transportation would make basic education unavailable.

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Dear Senators:
By letter previously acknowledged, you requested our opinion on several questions concerning a task force recommendation and proposed legislation to create an early learning program for certain of Washingtons children. For clarity and efficiency of analysis, we have paraphrased and reorganized your questions as follows:
1. Article IX, sections 1 and 2 of the Washington Constitution require the state to make ample provision for the education of all resident children and to maintain a general and uniform system of public schools. Does either section constrain the states ability to create a basic education program of early learning for only at-risk students from low-income families?

2. Does either article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution constrain the states ability to create a basic education program of early learning for only at-risk children from low-income families?

***2 3. Some existing state early learning grants are provided to sectarian organizations under article I, section 11 of the Washington Constitution. If the Legislature were to include an early learning program for at-risk, low-income children ages three and four in the definition of basic education,would the constitutionality of such a program be assessed instead under article IX, section 4 of the Washington Constitution?**

4. If the answer to question 3 is yes, would article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of state funds to sectarian organizations?

5. Under article III, section 22 of the Washington Constitution, the Superintendent of Public Instruction supervises all matters pertaining to public schools. If the Legislature were to pass legislation that replaced the current Early Childhood Education and Assistance Program, as applied to at-risk children, with a new basic education program of early learning, would the new program need to be administered by the Office of the Superintendent of Public Instruction?

6. If the Legislature were to create a new basic education program of early learning that replaced the Early Childhood Education and Assistance Program, would the previously-mentioned constitutional provisions permit the state to maintain currently-established waiting lists of eligible students for the new basic education early learning program? Would the answer be different if the state currently does not have the building or staff capacity to provide an early learning program for all eligible children?

7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?

8. If the Legislature were to include transportation to and from school as part of the K-12 basic education program, would it also have to provide transportation to students who participate in a basic education program of early learning?

BRIEF ANSWERS

1. Article IX, sections 1 and 2 of the Washington Constitution do not preclude the state from creating a basic education program of early learning for children who otherwise would be at risk of educational failure. We conclude, however, that legislation providing a basic education program only to students from low-income families would be inconsistent with article IX, section 1, absent a showing that low family income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income. [1]

2. Because the United States Supreme Court has not recognized a fundamental right to education, and the contemplated basic education early learning program does not implicate a suspect class, a challenge under the Equal Protection Clause should be reviewed under rational basis review. Because the Washington Supreme Court has not recognized a fundamental right to education, there is no cognizable privilegeconferred that would trigger heightened review under article I, section 12 of the Washington Constitution, and a challenge under that section also should be reviewed under rational basis review. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is that the criteria used to determine eligibility for the program must be rationally related to the programs objective: providing an early learning program to children who otherwise are at risk of educational failure.

***3** 3. Once an early learning program is included as part of basic educationin Washington, it must comply with both article I, section 11 and article IX, section 4 of the Washington Constitution.

4. Read together, article I, section 11 and article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Public funds may be granted or appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence, and the funds are not used for a religious purpose. We conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article I, section 11. However, absent a fact-specific analysis of the structure and operation of each sectarian organization, the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state, we cannot conclude that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4.

5. A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendents supervision.

6. Whether the state could maintain currently-established waiting lists of eligible students for the new basic education early learning program ultimately would require a fact-specific analysis. However, the Legislature would be establishing a new program, and Washington courts have evidenced a willingness to give latitude and time to a new educational program established by the Legislature. If the program includes a reasonable plan to address waiting lists and building and staff shortages in a reasonable time, we would not expect those shortcomings to support a successful constitutional challenge to a basic education program of early learning.

7. The Washington Constitution does not require that teachers in the contemplated early learning program be certified or that they have completed an education degree program. Qualifications for teachers are determined by the Legislature.

8. The Washington Constitution does not require that transportation be provided for students in a basic education program of early learning except, perhaps, where a student would be deprived of basic education if transportation were not available. However, where transportation is provided for other components of basic education, it would be prudent also to provide transportation for children attending a basic education program of early learning.

FACTUAL BACKGROUND

In your opinion request, you explain that your questions concern proposed legislation. You refer us specifically to Sections 110 and 111 of SB 5444, introduced but not enacted in the last session of the Legislature. You further advise us that Sections 110 and 111 of SB 5444 implement a recommendation of a Joint Task Force On Basic Education Finance created by the Legislature in 2007 to review the current basic education definition and funding formulas and to develop a new definition and funding structure options for basic education in Washington. See SB 5627 (2007).

*4 The Task Force issued its final report on January 14, 2009, which recommended defining basic education to include funding for pre-school programs for all children age three and four whose family income is at or below 130 percent of the federal poverty level, and whose parents choose to enroll in the program. *Final Report of the Joint Task Force on Basic Education Finance* 14 (Jan. 14, 2009). Section 110(1) of proposed SB 5444 essentially mirrors this recommendation by providing that the legislature intends to establish a basic education program of early learning for at-risk children that is part of the program of basic education under this chapter[.] Section 110(3) of proposed SB 5444 defines at-risk childrento mean children aged three, four, and five who are not eligible for kindergarten and whose family income is at or below one hundred thirty percent of the federal poverty level, as published annually by the federal department of health and human services. Participation in the program would be voluntary.

We analyze your questions in the context of this proposed legislation.

ANALYSIS

Because your questions ask about constitutional constraints on the Legislatures authority, we preface our analysis by noting the general principles Washington courts apply when considering the constitutionality of legislation.

On many occasions, the Washington Supreme Court has recognized the Legislatures authority to determine how to satisfy the states obligation to provide ample funding for the education of all of the states children through a general and uniform system of public schools. See, e.g., *Federal Way Sch. Dist. 210 v. State*, No. 80943-7, 2009 WL 3766092 (Wash. Nov. 12, 2009); *Tunstall v. Bergeson*, 141 Wn.2d 201, 221, 5 P.3d 691 (2000), *cert. denied*, 532 U.S. 920 (2001); *Seattle Sch. Dist. 1 v. State*, 90 Wn.2d 476, 51820, 585 P.2d 71 (1978); *Newman v. Schlarb*, 184 Wash. 147, 153, 50 P.2d 36 (1935); Sch. Dist. 20, *Spokane Cy. v. Bryan*, 51 Wash. 498, 502, 99 P. 28 (1909). The Court has emphasized that while it ultimately has the responsibility to determine whether legislation satisfies constitutional standards, it is not the function of the judiciary to micro-manage Washingtons education system. See *Brown v. State*, 155 Wn.2d 254, 26162, 119 P.3d 341 (2005); *Tunstall*, 141 Wn.2d at 223; see also *Seattle Sch. Dist. 1*, 90 Wn.2d at 496, 520 (While the Legislature must *act* pursuant to the constitutional mandate to discharge its duty, the general authority to select the *means* of discharging that duty should be left to the Legislature.).

Legislation is presumed to be constitutional, and the burden is on a person challenging an enacted statute to prove its unconstitutionality beyond a reasonable doubt. *City of Bellevue v. Lee*, 166 Wn.2d 581, 585, 210 P.3d 1011 (2009); *Tunstall*, 141 Wn.2d at 220. The heavy burdenof establishing that a statute is unconstitutional is met only if the challenger demonstrates through argument and researchthat there is no reasonable doubt that the statute violates the constitution. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215, 143 P.3d 571 (2006); *Larson v. Seattle Popular Monorail Auth.*, 156 Wn.2d 752, 757, 131 P.3d 892 (2006). As the Court has explained, this demanding standard of proofis justified because, as a coequal branch of government that is sworn to uphold the constitution, we assume the Legislature considered the constitutionality of its enactments and afford great deference to its judgment. *Tunstall*, 141 Wn.2d at 220.

1. Article IX, sections 1 and 2 of the Washington Constitution require the state to make ample provision for the education of all resident children and to maintain a general and uniform system of public schools. Does either section constrain the states ability to create a basic education program of early learning for only at-risk students from low-income families?

*5 Article IX, sections 1 and 2 do not preclude the state from creating a basic education program of early learning for children who otherwise would be at risk of educational failure. We conclude, however, that legislation providing a basic education program only to students from low-income families is inconsistent with article IX, section 1, absent a showing that low family

income is an accurate proxy for the risk of educational failure. This would include showing that other students facing the risk of educational failure are not excluded based on family income.

Article IX, section 1 of the Washington Constitution. Article IX, section 1 provides that [i]t is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex. As interpreted by the Washington Supreme Court, this provision imposes a duty on the Legislature to define basic educationand support it with ample funding from dependable and regular tax sources. *Seattle Sch. Dist. 1*, 90 Wn.2d at 51922; *accord McGowan v. State*, 148 Wn.2d 278, 28384, 60 P.3d 67 (2002).[2]

Article IX, section 1 also prohibits any distinction or preference on account of race, color, caste, or sex. Providing early education opportunities only to low-income families might be considered to be discrimination based on caste,in violation of article IX, section 1. While no decision of the Washington Supreme Court has defined caste,the dissenting opinion in *Northshore School District 417 v. Kinnear*, 84 Wn.2d 685, 530 P.2d 178 (1974), *overruled* in part by Seattle School District 1 v. State, 90 Wn.2d 476, 585 P.2d 71 (1978), excerpted from a dictionary definition of casteto focus on differences of wealth,from which it can be inferred that economic status is an important component of caste. *See Northshore Sch. Dist. 417*, 84 Wn.2d at 756 n.12.

The *Final Report of the Joint Task Force on Basic Education Finance* recommended that basic education be defined to include a program of early learning only for at-risk students from low-income families. Section 110 of SB 5444 would establish such a program, defining at-risk childrensolely by reference to family income level. SB 5444, § 110(3). Limiting the availability of a component of basic education to some children, but not others, based only on economic status, raises a possible conflict with the constitutional mandate that the state make ample provision for the education of *all* children residing within its borders, without distinction or preference on account of ... caste [.] Wash. Const. art. IX, § 1 (emphasis added).

Article IX, section 1 does not preclude the Legislature from providing a program of early education preferentially to children who need such a program to access subsequent components of the program of basic education in Washington. We conclude, however, that without a sufficient demonstration that family income is an accurate index of educational need, the use of family income to determine eligibility for an early education program that is part of the states program of basic education likely would violate article IX, section 1. In other words, once a program of early education is incorporated as a component of basic education, it is no more permissible to limit its availability based on economic status than it would be, similarly, to limit the availability of elementary schools or secondary schools.

***6 Article IX, section 2 of the Washington Constitution**. Turning to article IX, section 2, that section provides, in part: The legislature shall provide for a general and uniform system of public schools. Article IX, section 2 long has been understood as imposing a fundamental duty upon the state to create a general and uniform public school *system*. See, *e.g., Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *4, ¶ 18; *Tunstall*, 141 Wn.2d at 221; *Seattle Sch. Dist. 1*, 90 Wn.2d at 522; *Newman*, 184 Wash. at 152. The Legislature has authority to select the means of discharging this duty. *Seattle Sch. Dist. 1*, 90 Wn.2d at 520.

This uniformity requirement does not mandate a one-size-fits-all approach to education. It is not satisfied by rote equality of facilities and instruction for all students, but rather through free access to certain minimum and reasonably standardized educational and instructional facil- etiesand a degree of uniformity which enables a child to transfer from one district to another within the same grade without substantial loss of credit or standing. *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *4, ¶ 18 (quoting *Northshore Sch. Dist. 417*, 84 Wn.2d at 729).[3] It does not preclude educational assistance to individuals or groups of individuals who need such assistance to acquire those skills and training that are reasonably understood to be fundamental and basic to a sound education. *Northshore Sch. Dist., 84* Wn.2d at 729. [T]he State is not obligated to provide an identical education to all children within the state regardless of the circumstances in which they are found. Tunstall, 141 Wn.2d at 220. To conclude otherwise would require us to infer from the constitutional language a limitation on the Legislatures authority that the Washington Constitution does not actually express. *See Washington State Farm Bureau Fedn v. Gregoire*, 162 Wn.2d 284, 290, 174 P.3d 1142 (2007) (Legislature has plenary power to act, except as constitutionally limited).

In summary, we conclude that a basic education program of early learning for children who are at risk of educational failure could be implemented without violating article IX, sections 1 and 2 of the Washington Constitution. We do not read either section as mandating absolutely identical educational experiences for all children in disregard of their differing educational needs. See *Tunstall*, 141 Wn.2d at 220 (recognizing the differing circumstances of children). Accordingly, if the Legislature finds, in the exercise of its plenary authority to define basic education, that some children need a particular service and others do not, we see nothing in the constitution that would deny the Legislature the choice to provide the service to those who need it, without extending it to those who do not. That is, the Legislature need not choose between either ignoring the needs of children who are at risk of educational failure, or providing early education to all children, including those who do not need it to succeed. Consistent with article IX, section 1, however, where the Legislature defines an educational program as part of basic education, the program must be available freely to any child who needs that program, without distinction or preference on account of race, color, caste, or sex.

2. Does either article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution constrain the states ability to create a basic education program of early learning for only at-risk children from low-income families?

*7 A basic education program of early learning only for children from low-income families could be implemented without violating either article I, section 12 or the Fourteenth Amendment, if it can be demonstrated that the use of family income to determine eligibility for the program is rationally related to the programs objective: providing an early learning program to children who otherwise are at risk of educational failure. Absent a demonstration that family income is rationally related to educational risk, there is no rational basis for concluding that children who are at risk of educational failure are being served.

The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Under the Equal Protection Clause, the state may not deny to any person within its jurisdiction the equal protection of the laws. A statute that is challenged under the Equal Protection Clause ordinarily is upheld if it is rationally related to a legitimate government purpose. See Kadrmas v. Dickinson Pub. Schs., 487 U.S. 450, 458 (1988). If the statute interferes with a fundamental rightor discriminates against a suspect class,an equal protection challenge triggers strict scrutiny, under which the statute must be supported by a compelling government interest and distinctions drawn in the statute must be necessary to further the statutes purpose. See *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 17 (1973).

Neither the United States Supreme Court nor the Washington Supreme Court has held that education is a fundamental right that should trigger strict scrutiny when the government interferes with an individuals access to it. The United States Supreme Court has explicitly rejected that proposition. *See Kadrmas*, 487 U.S. at 458 (citing *Plyler v. Doe*, 457 U.S. 202, 223 (1982); *San Antonio Indep. Sch. Dist.*, 411 U.S. at 16, 3336). Although the Washington Supreme Court has held that article IX, section 2 imposes on the state a fundamental dutyto create a common school system, *Tunstall*, 141 Wn.2d at 221, the Court has not translated that duty into a fundamental right to educationthat could be asserted in an equal protection challenge, explaining that such an abstract right, taken to its logical extreme, improperly would subject all legislation involving education to strict scrutiny. *Tunstall*, 141 Wn.2d at 226 n.21.

To qualify as a suspect class for purposes of an equal protection analysis, the class must have suffered a history of discrimination; have as the characteristic defining the class an obvious, immutable trait that frequently bears no relation to ability to perform or contribute to society; and show that it is a minority or politically powerless class. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 44041 (1985); *American Legion Post 149 v. Dept of Health*, 164 Wn.2d 570, 609 n.31, 192 P.3d 306 (2008). Race, alienage, and national origin are examples of suspect classifications. *City of Cleburne*, 473 U.S. at 440; *American Legion Post 149*, 164 Wn.2d at 609. Accordingly, where an early learning program is made available to children who are at risk of educational failure, no suspect class is implicated that would raise an equal protection concern. Even where the eligibility is determined using family income as a proxy for educational risk, as in SB 5444, a successful equal protection challenge would be unlikely since socioeconomic conditionwhether high or lowis not a suspect class. *Kadrmas*, 487 U.S. at 458 (citing *Ortwein v. Schwab*, 410 U.S. 656, 660 (1973)); *Bowman v. Waldt*, 9 Wn. App. 562, 569, 513 P.2d 559 (1973).[4]

*8 It, therefore, appears that the contemplated early learning program does not interfere with a judicially-recognized fundamental right, and implicates no suspect class. Accordingly, rational basis review would govern an equal protection challenge, under which a legislatively-established program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive an equal protection challenge under the Fourteenth Amendment. See generally Heller v. Doe, 509 U.S. 312, 31920 (1993) (a classification involving neither fundamental rights nor a suspect class is accorded a strong presumption of validity and cannot run afoul of the Equal Protection Clause if there is a rational relationship between any disparity of treatment and some legitimate governmental purpose). *See also American Legion Post 149*, 164 Wn.2d at 60809; *Andersen v. King Cy.*, 158 Wn.2d 1, 31, 138 P.3d 963 (2006) (plurality) (citing *Heller*, 509 U.S. at 319).[5]

Article I, section 12 of the Washington Constitution. Article I, section 12 provides that [n]o law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. Where the Equal Protection Clause is concerned with the discriminatory deprivation of rights to classes of persons, article I, section 12 is concerned with the discriminatory granting of rights to some classes to the disadvantage of others. Grant Cy. *Fire Prot. Dist. 5 v. City of Moses Lake*, 150 Wn.2d 791, 80709, 83 P.3d 419 (2004); accord *Madison v. State*, 161 Wn.2d 85, 9697, 163 P.3d 757 (2007) (plurality). Article I, section 12 is analyzed independently from the federal Equal Protection Clause. *Grant Cy.*, 150 Wn.2d at 80511.

The contours of the analysis used to assess alleged violations of article I, section 12 are not yet fully developed. *See Madison*, 161 Wn.2d at 95 (plurality); *Andersen*, 158 Wn.2d at 127 (Chambers, J., concurring in dissent). It is clear, however, that the only privilegesaddressed in article I, section 12 are those that implicate a fundamental right belonging to citizens of the state by reason of their state citizenship. *American Legion Post 149*, 164 Wn.2d at 607; *Grant Cy. Fire Prot. Dist. 5*, 150 Wn.2d at 81213. A right to education has not been identified as a fundamental right of citizenship for purposes of article I, section 12. See *American Legion Post 149*, 164 Wn.2d at 607; *Grant Cy. Fire Prot. Dist. 5*, 150 Wn.2d at 813; *State v. Vance*, 29 Wash. 435, 458, 70 P. 34 (1902).[6]

Where no fundamental right of citizenship is at issue, Washington courts follow federal equal protection analysis to decide whether a violation of article I, section 12 has occurred. *Madison*, 161 Wn.2d at 9798 (plurality); *Andersen*, 158 Wn.2d at 9 (plurality). As explained above, rational basis review is appropriate here, under which a legislatively-established program in which eligibility criteria are rationally related to legitimate educational interests would be accorded a strong presumption of validity and likely would survive a challenge under article I, section 12.[7]

*9 We conclude that under existing case law, the basic education program of early learning described in SB 5444 probably would not be subjected to strict scrutiny under article I, section 12 of the Washington Constitution or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, because there is no fundamental right to educationrecognized by either the United States Supreme Court or the Washington Supreme Court, and because neither Court has recognized economic status as a suspect class. Accordingly, the primary constraint imposed by article I, section 12 and the Equal Protection Clause is the burden that the state must meet in a rational basis review: The classification must be rationally related to the legitimate educational interests served by the program. In other words, if family income is used to determine eligibility for the program, that basis for eligibility must be rationally related to the programs objective: providing an early learning program to children who otherwise are at risk of educational failure.

3. Some existing state early learning grants are provided to sectarian organizations under article I, section 11 of the Washington Constitution. If the Legislature were to include an early learning program for at-risk, low-income children ages three and four in the definition of basic education,would the constitutionality of such a program be assessed instead under article IX, section 4 of the Washington Constitution?

If an early learning program were included as part of basic educationin Washington, it would have to comply with article IX, section 4 of the Washington Constitution, but such inclusion would not release the program from the requirements of article I, section 11. Rather, the new program would be subject to both article I, section 11 and article IX, section 4.

All Washington state programs expending public funds are subject to the prohibition in article I, section 11 of the Washington Constitution, which provides that [n]o public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment[.] This provision is violated if public money or property is transferred or made available for a religious purpose. State *ex rel. Gallwey v. Grimm*, 146 Wn.2d 445, 45566, 48 P.3d 274 (2002) (citing *Malyon v. Pierce Cy.*, 131 Wn.2d 779, 799800, 935 P.2d 1272 (1997)).

Programs that are part of the system of public schools are subject to article IX, section 4, as well as article I, section 11. *Gallwey*, 146 Wn.2d at 45566. Article IX, section 4 of the Washington Constitution requires that [a]ll schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence. By expanding the definition of basic educationto include an early learning program for at-risk, low-income children, the Legislature effectively would make such a program part of the general and uniform system of public schoolsreferenced in article IX, section 2 of the Washington Constitution. [8]

***10** Article I, section 11 and article IX, section 4 do not operate in isolation from one another. Both sections arose from the same driving concern of the state constitutional convention [regarding] religious influence in, and control over, public education. Malyon, 131 Wn.2d at 794. As explained in *State ex rel. Dearle v. Frazier*, 102 Wash. 369, 375, 173 P. 35 (1918), the two provisions operate together to prevent the teaching of any of the beliefs, creeds, doctrines, opinions, or dogmas of any sectin the public school system and to prevent the appropriation of money for parochial and denominational schools[.]

4. If the answer to question 3 is yes, would article IX, section 4 of the Washington Constitution prohibit the granting or appropriation of state funds to sectarian organizations?

Because article I, section 11 and article IX, section 4 of the Washington Constitution both apply to programs that are part of basic educationin Washington, we turn to your question whether article IX, section 4 prohibits the granting or appropriation of state funds to sectarian organizations in support of an the early learning program described in SB 5444. Article IX, section 4, read together with article I, section 11, prohibits the granting or appropriation of public funds to support religious instruction or any basic education program that is subject to sectarian control or influence. Consistent with these provisions, public funds may be granted or appropriated for the operation of early learning programs by sectarian organizations only if the programs remain free of sectarian control or influence and the funds are not used for a religious purpose. Factors useful in identifying sectarian control or influence are presented in the cases discussed below.

Article IX, section 4 of the Washington Constitution imposes a strict separation of religion and public education. In *Weiss v. Bruno*, 82 Wn.2d 199, 509 P.2d 973 (1973), *overruled on other grounds by Gallwey*, 146 Wn.2d at 45566, [9] the Court applied a two-part test for determining whether article IX, section 4 was violated: (1) Does the challenged program or enactment support the school or school program in question with any public funds; and (2) if so, is the school or school program under sectarian control or influence? *Weiss*, 82 Wn.2d at 20609. If the answer to both questions is yes, the challenged program or enactment violates article IX, section 4. *Id.*

Your question assumes that state funds would be granted or appropriated to sectarian organizations to carry out the early learning program and that the early learning program would be part of the states program of basic education. Consequently, the answer to the first *Weiss* inquiry is yes: The early learning program described in SB 5444 would be supported by public funds. Although public support is assumed here, we note that the Court in *Weiss* took a broad view of what constitutes support,holding that [a]ny use of public funds that benefits schools under sectarian control or influenceregardless of whether that benefit is characterized as indirector incidentalviolates this provision [article IX, section 4]. *Weiss*, 82 Wn.2d at 211; see also *Mitchell v. Consol. Sch. Dist. 201*, 17 Wn.2d 61, 6667, 135 P.2d 79 (1943) (statute providing free transportation for school children attending sectarian

schools violates article IX, section 4 and article I, section 11 unless it may be said that the transportation of pupils to and from the [sectarian] school is of no benefit to the school itself).

*11 Because public support for the early learning program described in SB 5444 is assumed, consistency with article IX, section 4 therefore depends on the answer to the second Weiss inquiry: whether individual early learning programs established under SB 5444 are free from sectarian control or influence. *Weiss*, 82 Wn.2d at 20809. Sectarian control may be manifest, as it was in *Weiss*, where the schools at issue were owned and operated by a religious institution and under the control of parish pastors. *Id.* at 209. In less obvious situations, Washington courts have not set forth a list of specific factors for determining whether a school or program is free from sectarian control or influence, but the factual analysis in *Weiss* suggests some relevant requirements that must be satisfied to find that a particular program is not under sectarian control or influence: (1) The program and its curriculum may not provide instruction in religion or religious practice; (2) Devotional religious symbols or items may not be displayed in the room(s) used for the program; (3) The program may not discriminate against students or staff based on religion or sect; (4) The content of the program and its curriculum may not be determined by a religious institution or its representatives or leaders. *Weiss*, 82 Wn.2d at 20911. Weiss does not state or imply that these are exclusive or comprehensive factors in determining whether a school or program is under sectarian influence or control; they merely reflect the facts in the record considered in that particular case. Under other facts and circumstances, additional factors or different factors could be relevant.

Your question assumes state funds would be granted or appropriated to sectarian organizations. It might be possible to establish standards and limitations to ensure that individual early learning programs operated by those organizations are free from sectarian control or influence. Such standards and limitations incorporated into SB 5444 or a similar bill could deflect a facial challenge under article IX, section 4. [10] As we noted above, the factors identified in *Weiss* could be useful in developing statutory standards and limitations, but that list of factors is neither complete nor exclusive.

Even if SB 5444 or a similar bill including statutory standards and limitations were enacted and withstood a facial challenge, specific grants or appropriations to sectarian organizations would be subject to as-applied challenges alleging a violation of article IX, section 4. Such a challenge would require a fact-specific analysis of the structure and operation of the sectarian organization and the particular early learning program operated by that organization, and the conditions imposed on the organization and enforced by the state.

Consequently, we cannot advise you that the granting or appropriation of state funds to sectarian organizations for the purposes described in SB 5444 can be accomplished in compliance with article IX, section 4. Compliance ultimately cannot be determined without analysis of the specific facts and circumstances.

5. Under article III, section 22 of the Washington Constitution, the Superintendent of Public Instruction supervises all matters pertaining to public schools. If the Legislature were to pass legislation that replaced the current Early Childhood Education and Assistance Program, as applied to at-risk children, with a new basic education program of early learning, would the new program need to be administered by the Office of the Superintendent of Public Instruction?

*12 A new basic education program of early learning must be supervised by the Superintendent of Public Instruction; however, the Legislature may create an agency or institution to administer the program under the Superintendents supervision.

Article III, section 22 of the Washington Constitution provides, in part, that [t]he superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. As indicated above, by defining basic educationto include an early learning program, the Legislature is defining the states public school system to include an early learning program. Because the Superintendent of Public Instruction is designated in the constitution as the supervisor of the states public school system, the Superintendent necessarily would be the supervisor of the early learning program as well. As we observed in an earlier opinion, this constitutional authority of the Superintendent cannot be made subordinate to that of another officer or body. AGO 1998 No. 6 at 4 (citing AGO 1961-62 No. 2). Nor may

the authority to supervise early learning, if it is defined as an element of basic education, be vested in any other officer or body not under the Superintendents supervision. AGO 1998 No. 6 at 4.

The constitution does not, however, limit the Legislatures authority to design the organizational structure under which the public education system is administered. See *Washington State Farm Bureau Fedn*, 162 Wn.2d at 290 (It is a fundamental principle of our system of government that the Legislature has plenary power to enact laws, except as limited by our state and federal constitutions.). While article III, section 22 precludes the Legislature from assigning supervisory authority over basic education to any other officer or body besides the Superintendent, it otherwise leaves the Legislature ... quite free to shape the states education system as it may choose, and to define the Superintendents role within that system. AGO 1998 No. 6 at 4. Accordingly, article III, section 22 does not preclude the Legislature from creating an agency or department to *administer* a new basic education program of early learning, so long as the Superintendent retains his or her constitutional authority to *supervise* the program.

6. If the Legislature were to create a new basic education program of early learning that replaced the Early Childhood Education and Assistance Program, would the previously-mentioned constitutional provisions permit the state to maintain currently-established waiting lists of eligible students for the new basic education early learning program? Would the answer be different if the state currently does not have the building or staff capacity to provide an early learning program for all eligible children?

Since the Legislature would be establishing a new program, Washington courts would be likely to recognize some need for time to establish the program and its resources, but the answer to both questions ultimately would depend on the facts. In *Seattle School District 1*, 90 Wn.2d at 53738, the Court evidenced a willingness to give latitude and time to a new educational program established by the Legislature. This willingness is consistent with the Courts recognition that the Legislature establishes the means for discharging its statutory duty under article IX, sections 1 and 2 of the Washington Constitution. *Seattle Sch. Dist. 1*, 90 Wn.2d at 520.

***13** Article IX, section 1 requires that the Legislature define basic educationand support it with ample funding from dependable and regular tax sources. *McGowan*, 148 Wn.2d at 28384; *Seattle Sch. Dist. 1*, 90 Wn.2d at 51922. As explained above, once the Legislature includes an early learning program within the definition of basic education,article IX, section 1 mandates that it be provided with ample funding. Whether currently-established waiting lists could be maintained consistent with article IX, section 1 likely would depend on why they are maintained and whether all children ultimately are served. For example, if children on waiting lists did not receive early learning instruction (whether because of inadequate funding, building or staff shortages, or some other reason), a violation of article IX, section 1 would be more likely than if the lists were used to allocate students among early learning programs with different start dates, but with every qualified student eventually being served.

Article IX, section 2 requires the Legislature to provide for a general and uniform system of public schools. As explained in *Parents Involved in Community Schools*, 149 Wn.2d at 67274, this section was intended to ensure a free, statewide system of nonsectarian schools with uniform content and administration of education. The focus is on the uniformity in the educational program provided, not in the detail of funding or administration, and the Court presumes that program is constitutional. See *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *45, ¶¶ 1824. A challenger conceivably could overcome that presumption of constitutionality if, for example, use of the existing waiting lists resulted in a significant disparity of educational opportunity or content across the state, or if building or staff shortages persisted over a long enough time period; again, the success of any such challenge would depend on the facts.

If access to a basic education program of early learning were limited by building or staff capacity, the legislative establishment of a reasonable plan to overcome or correct the limitations could be consistent with sections 1 and 2 of article IX of the Washington Constitution. In a challenge under article IX, sections 1 and 2, the Court deferred to the Legislatures evolving formulas for funding basic education. *Federal Way Sch. Dist. 210*, 2009 WL 3766092 at *45. Similarly, in the equal protection context, the Court in *Dandridge v. Williams*, 397 U.S. 471, 487 (1970), noted that a state should not have to choose between attacking

every aspect of a problem or not attacking the problem at all. Assuming, therefore, that the Legislature established a plan for providing the building and staff capacity in a reasonable amount of time, and assuming there were not persistent disparities among school districts as to availability of the program, the contemplated early learning program probably would withstand a constitutional challenge premised on alleged building or staff shortages. [11]

7. If the Legislature were to create a new basic education program of early learning, do the constitutional requirements for basic education require that teachers in the early learning program be certified and have completed an education degree program?

***14** No. The qualifications for teachers are not set in the Washington Constitution, but only in statute. See RCW 28A.410. The constitution does not require certification, and does not restrict the Legislatures authority to set qualifications in statute. See *Wash. Const. art.* IX (providing for a system of common schools without specifying required qualifications for teachers); *Cedar Cy. Comm. v. Munro*, 134 Wn.2d 377, 386, 950 P.2d 446 (1998) (explaining that the Legislatures authority is unrestrained except as limited by the constitution). Teacher qualifications for early learning are accordingly within the Legislatures authority to determine.

8. If the Legislature were to include transportation to and from school as part of the K-12 basic education program, would it also have to provide transportation to students who participate in a basic education program of early learning?

We have found no controlling appellate decision in Washington holding, as a matter of constitutional law, that if transportation is provided for one part of basic education, it must be provided for all parts of basic education. However, the Court in *Lane v. Ocosta School District 172*, 13 Wn. App. 697, 703, 537 P.2d 1052 (1975), implied that there may be a duty to provide transportation to school if a student otherwise would be deprived of his or her right to attend school. Similarly, on remand from *Seattle School District 1*, 90 Wn.2d 476, the trial court ruled that four programs outside the basic education act were part of the states basic education dutyspecial education, remedial assistance, bilingual instruction, and some transportationbecause they were needed to provide some students access to basic education. *Seattle Sch. Dist. 1 v. State*, Thurston County Superior Court No. 81-2-1713-1. Under the reasoning of these courts, transportation might be required where necessary to provide access to an early learning program that has been made part of the states program of basic education.

If a court were asked to decide whether the Washington Constitution requires comparable transportation for children in a basic education program of early learning where transportation already is provided to students in the K-12 basic education program, we would expect it to apply the principle articulated in *Lane*that transportation to school is mandated for children in a basic education program of early learning where they otherwise would be unable to attend the program, thereby depriving them of a component of basic education. The Legislature has substantial discretion in determining which transportation services must be provided to students. Presumably, the Legislature has exercised that discretion based upon an assessment of student need for transportation services; applying the *Lane* principle, transportation for children attending a basic education program of early learning should be provided if their need for transportation is comparable to that of K-12 students.

***15** We trust the foregoing will be useful to you.

Robert M. McKenna
Attorney General
Alan D. Copsey
Deputy Solicitor General

APPENDIX

TABLE OF STATE CONSTITUTIONAL PROVISIONS CITED IN THIS MEMORANDUM

Citation and Subject	Text
Art. I, § 11 Religious Freedom	Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a countys or public hospital districts hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.
Art. I, § 12 Privileges and Immunities	No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations
Art. III, § 22 Superintendent of Public Instruction; Duties and Salary	The superintendent of public instruction shall have supervision over all matters pertaining to public schools, and shall perform such specific duties as may be prescribed by law. He shall receive an annual salary of twenty-five hundred dollars, which may be increased by law, but shall never exceed four thousand dollars per annum.
Art. IX, § 1 Education: Preamble	It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex
Art. IX, § 2 Public School System	The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.
Art. IX, § 4 Sectarian Control or Influence Prohibited	All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

Footnotes

1 The provisions of the state constitution that are discussed in this opinion are set forth in full as an appendix to this opinion.

2 You have not asked us to address what constitutes amplefunding for an early education program, and we do not do so.

3 Much of the decision in Northshore School District was overruled in Seattle School District. The holdings in Northshore School District cited in this paragraph were not overruled.

4 Although the Washington Supreme Court has noted the possibility that a classification based on wealth may form a semi-suspect class,it has held that more is required to justify even an intermediate level of scrutiny. In re the PRP of Runyan, 121 Wn.2d 432, 853 P.2d 424 (1993). The Court there explained that intermediate scrutiny will be applied only if the statute implicates both an important right and a semi-suspect class not accountable for its status. Id. at 448. Where, as in SB 5444, the target class (poor children) is given assistance (access to any early learning program), a person outside the target class would have difficulty demonstrating he or she is in a suspect class (or semi-suspect class) under the criteria identified in City of Cleburne, 473 U.S. at 44041, and American Legion Post 149, 164 Wn.2d at 609 n.31 (history of discrimination; irrelevant defining trait; political powerlessness).

5 Nor may a statute be challenged based upon an argument that it is not narrowly tailoredto serve its purpose when the statute is not subject to strict scrutiny. See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. 1, 551 U.S. 701, 783 (2007) (Kennedy, J., concurring) (applying the narrow tailoringrequirement only to statutes subject to strict scrutiny).

6 In a case alleging sex discrimination in access to interscholastic sports teams, the Court suggested in dictum that in Washington there is a fundamental right to education free from discrimination:

The Supreme Court of Washington has not yet expressly held that education free of discrimination based upon sex is a fundamental right within the meaning of Const. art. 1, § 12 so as to call for strict scrutiny of a classification claimed to infringe upon that right. That in Washington, education (physical and cultural), free from discrimination based on sex, is a fundamental constitutional right, is a conclusion properly drawn from Const. art. 9, § 1 adopted in 1889.

Darrin v. Gould, 85 Wn.2d 859, 86970, 540 P.2d 882 (1975). The quoted passage is dictum, however, because the Court ultimately decided the case based on article XXXI, Washingtons equal rights amendment. Id. at 870, 877.

7 In a due process analysis, the Washington Supreme Court stated that courts should be reluctant to identify new fundamental rights because, in doing so, a matter is effectively placed outside the arena of public debate and legislative action. American Legion Post 149, 164 Wn.2d at 600 (quoting Washington v. Glucksberg, 521 U.S. 702, 720 (1997)). If the Court nevertheless were to find that Washingtonians have a fundamental right to education by reason of their state citizenship, the early learning program described in SB 5444 might be considered a privilegeunder article I, section 12, because it would be part of basic education. If that program were subjected to strict scrutiny, the state presumably would have to show that eligibility based on family income is precisely tailored to serve the compelling educational interest served by the early education program.

8 See School Dist. 20, Spokane Cy., 51 Wash. at 504 (common school, within meaning of article IX, section 2 is one that is common to all children of proper age and capacity, and which is free and subject to, and under control of, qualified voters of the school district); Litchman v. Shannon, 90 Wash. 186, 191, 155 P. 783 (1916) (public schoolsare schools established under the laws of the state, maintained at public expense by taxation, and open without charge to all children in the district); see also McGowan, 148 Wn.2d at 293 (holding implicitly that basic education is to be defined by reference to types of educational servicesor instruction).

9 In Gallwey, the Court stated [n]othing in todays decision is intended to disturb this courts holding in Weiss as it relates to common schools. Gallwey, 146 Wn.2d at 466.

10 The term facial challengeis used to describe a lawsuit in which a plaintiff contends that a particular law is unconstitutional in all possible applications. Washington State Grange v. Washington State Republican Party, 128 S. Ct. 1184, 1190 (2008). In such a case, a plaintiff can succeed only if there are no circumstances under which the law could be constitutionally applied, and the Court will not speculate about hypothetical or imaginary cases in which unconstitutional results may be possible. Id. A statute that is constitutional on its face might still be challenged as unconstitutional in specific applications. Id. at 1191. A constitutional challenge to a specific application of a law is called an as-applied challenge.

11 It may be that the use of private facilities, including those owned or operated by sectarian organizations, and the operation of early learning programs by sectarian organizations are means of responding to inadequate building and staff capacity. However, inadequate capacity cannot justify or excuse noncompliance with article I, section 11 and article IX, section 4, as we explained in response to your fourth question. See Weiss, 82 Wn.2d at 20607 (article IX, section 4 does not permit even a de minimisviolation). See also Perry v. Sch. Dist. 81, Spokane, 54 Wn.2d 886, 896, 344 P.2d 1036 (1959) (public school teachersmere distribution of registration cards for voluntary, off-campus religious instruction held to be use of school facilities supported by public funds to promote a religious program in violation of article IX, section 4).

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TAB 15

OLD NORTH SCHOOL, SEATTLE, 1873

—which was located on the north side of Pine, between Third and Fourth Avenues, the present site of the Bon Marche'. "If you lived north of Cherry Street you went to the North School."

—Kindness. Mr. Charles A. Kinnear

Early SCHOOLS *of* WASHINGTON TERRITORY

By ANGIE BURT BOWDEN

★"A Trail, a Hearth--
Rude shop--and School."
---Meany

★"I have considered the
days of old--the years
of ancient times."
--Psalms

1935

Lowman and Hanford Company

Seattle, Washington

ILLUSTRATIONS

FOREWORD

"Although much has, in directions of historical inquiry, been chronicled by early annalists, and more still has been sketched by later ones anxious to leave no field unswept, there are chapters yet slumbering in undiscovered relics that deserve to be rescued from the destructive agencies of time, weather and accident. Crumbs are being still gathered whose value at times surprises us. Let the threshings continue; let the gleaners keep up their work. Old farmhouses, attics, store-rooms, closets, trunks, and wherever else collections of papers may be made, should be diligently searched. Many a curious, and many a valuable discovery has been made in this way, of useful historical material."

—Old Colony Historical Society of Massachusetts.

It was while on a visit to me in 1930 that an old school-mate, Mrs. J. B. Davidson, insisted that I write an article on the early schools of the State. She, herself, was much interested in the subject, and because I had been among the early settlers in the eastern part of the state from 1866 to 1888, had taught there and since that time had lived in Western Washington, she felt that I ought to have some familiarity with sources of information, both east and west. The motive in doing this was to preserve that portion of our pioneer history relating to the early schools, a subject which seemed to have been neglected.

To please her I began soon after to jot down a few notes as I came across them; but to do the work properly and correctly—county by county—seemed to present itself as a stupendous task, too great for me to accomplish, and I was sure that my efforts would always remain a "fragment." But with a woman's privilege of changing her mind, as time went on, an effort was made to complete a work that might be used as a standard reference book.

In compiling this work I have been at great pains to acquire all possible authentic information regarding the early schools of the Territory, from records and histories of the schools of the counties,

that each county may be given its full credit. In the beginning all county superintendents were written to for whatever material they might have, or know the source of, regarding these early schools or the teachers. No reply was received from eight. In some of the largest and oldest school districts fire had destroyed the early records; notably, Vancouver, Walla Walla, Spokane, Ellensburg, Wenatchee, Tacoma and several others. In most of the counties no early records had been kept, and the material here has been furnished by interested county superintendents who made search for what was to be obtained; from pioneers who have been active in all phases of historical research and were generous in loaning their scrap books, clippings, old catalogues and programs; from reports of territorial superintendents of public instruction and various other sources.

Those private schools which no longer exist have been brought back to memory by the assistance of pioneers and their children who were pupils. The records of the Catholic schools of the Territory have been carefully kept in every detail and were most cheerfully and promptly sent to me.

There are two reasons for the lack of records in the counties; first the changing and intermingling of county lines. Legislatures for years changed the metes and bounds, creating new counties out of portions of the old ones. For instance, Stevens County between November 27, 1871 and March 13, 1899 had ten other counties made from it. It is, therefore, something of a problem to determine to which county the records of a certain locality belong. The second reason was because the early settlers seemed singularly careless in regard to documentary affairs, particularly those regarding schools.

In the reports of the early-day county superintendents, many of them complain of the difficulty of obtaining reports from the districts. Many of the teachers, especially in the country districts, were transients; there only for one short term perhaps. Then the women teachers often married and the men teachers passed on to some more profitable business. Thus no interest was taken in keeping records.

Professor Edmond S. Meany, head of the History Department of the University of Washington, states that there is today absolutely no record of several of the sessions of the Territorial Legislature.

Then, too, one of the great weaknesses of the first law of the Territory in 1854 in regard to the schools was that it did not provide for a centralized control of the educational system. Very few reports were ever published as the law provided and from the difficulty encountered in getting material, as I have related, one may assume that

if the reports were filed as also required by law, then they must have been destroyed as few of them seem to be in existence.

Some of the young men who taught our early schools were college men, well-educated and capable and later they became prominent in the State in various walks of life. A clipping from a newspaper of March 25, 1876, explains, however, the usual situation perfectly: "Professor Mariner closed his school and left for the East to take a better thing."

The counties have been presented in chronological order according to the first school whether public or private, and statistics have been avoided as far as possible. Boundaries of districts have been omitted but practically all of them can be found at the Board of Education in Olympia or in the County Commissioners' records. Because of the uncertainty of the source of much of the information errors may have occurred and there are undoubtedly many omissions which must be laid to the inability to obtain needed data as well as to the limitations of space. Normal schools were not in existence until statehood, the State Reform School was not established at Chehalis until 1890 nor the State College at Pullman until 1891.

Because there is a likelihood of the county boundaries being eventually done away with, a short account of their organization is given at the beginning of each county.

"THE HALF HAS NOT BEEN TOLD—"

GENERAL HISTORY

Thomas Wentworth Higginson, Massachusetts historian wrote: "God winnowed the whole world to send of His best to found a New Nation." The same may be said of the pioneers of Washington Territory who "were all people of noble aspirations and home builders of the best sort."

They came,—not seeking gold,—but seeking lands for their families where they could build homes, towns, churches and schoolhouses, believing that "the future of the race depends on the forward march of the feet of little children" —and the great states of Washington and Oregon owe much to the solid foundations laid by these early settlers along educational, religious and law-abiding lines. With them ever the schoolhouse followed the flag.

They did not wait until they reached the land of their hopes to begin the instruction of their children, if we may believe the assertion of the late Emerson Hough, writer of historical stories, in a scene from *The Covered Wagon*. In this story Hough makes Will Banion, the hero, say, when planning for the long march of the train of 1848,

" 'I suppose, too, you've located all your doctors; also all your preachers—you needn't camp them, the preachers, all together. Personally I believe in Sunday rest and Sunday services. We're taking church and state and home and law along with us, day by day, men... I even think we ought to find out our musicians—it's good to have a bugler, if you can. And at night when the people are tired and disheartened, music is good to help them pull together.'

"The bearded men who listened nodded yet again.

" 'About schools now— the other trains that went out, the Applegates in 1843, the Donners of 1846, each train, I believe, had regular schools along, with *hours* each day.' "

In many of the novels of late years it has become the fashion to weave romance around the schools and the teachers of those pioneer [illegible] of the West. Some of them include, Mrs. Eva Emery Dye's books [illegible] ich one, *McDonald of Oregon*, she says "Aunt Tabitha Brown's

log orphanage grew into Pacific University," and "Chloe Boone opened the first school ever taught by a woman outside of the missions in Oregon." Among other historical novels with the same theme are *The Virginian* by Owen Wister, *The Strain of White* by Anderson, *Happy Valley* by Anne Shannon Monroe, *The Covered Wagon* by Emerson Hough and *The Log Schoolhouse on the Columbia* by Hezekiah Butterworth.

Before we take up the record of the first schools in the Territory it is necessary that we go far afield, geographically, to Hawaii or what was known in the early days as the Sandwich Islands. In the first part of the nineteenth century these islands were intimately connected with this section of our coast in business and in educational matters. Peter Parley in his *Universal History,* published in 1837, has this to say about them:

"The Sandwich Islands are among the most important in Polynesia. They consist of ten islands, of which Owhyhei or Hawaii is the largest. These Islands were discovered by Captain James Cook in 1778." They "soon after became the resort of whale ships, and of all the vessels that voyaged in that part of the Pacific Ocean: These whalers and clipper trading ships brought American missionaries there as early as 1819 who preached the gospel to the Islanders. Kaahumana, the queen regent, adopted the Christian religion and by her assistance the missionaries met with great success, early establishing a number of schools." And today in the town of Wailuku on the island of Maui, stand several schools that are over a hundred years old, and to which Californians of the early days sent their children to be educated. It was here that manual training was first taught in the new world.

From another early historian we learn that as early as 1825 there was commercial intercourse with the Islands during the fur trade period and frequent sailings were maintained between them and Fort Vancouver. After reaching Vancouver in September, 1834, from the Atlantic Coast, with the outfit for Wyeth and his party when they came overland on their second expedition, the *May Dacre* was put on a regular run to the Islands. And John Ball, the first schoolmaster at Fort Vancouver, is said to have returned East "by way of the Sandwich Islands."

One tangible reminder of those days are the three magnificent Hawaiian locust trees in front of the factor's house at Fort Nisqually, still standing today (1933), brought from the Islands and planted by Dr. William Fraser Tolmie in 1833.

Thus we see an American civilization established there, and closely connected with the start of civilization on our own western shores. It

was so well established that the missionaries there were able to be of much help to the mission school of Rev. H. H. Spalding and to others. Rev. Spalding's first sheep were given him by the Sandwich Islanders and they increased into large flocks. In 1838 it is recorded that the mission church at Honolulu sent a contribution of $80.00 and ten bushels of salt to Mr. Spalding's Mission School.

Then in April, 1839, a printing press arrived from the Islands for use at the Spalding mission. It was the first one on the Pacific Coast, and on it was done the first printing here. It had been sent in 1819 by the American Board to the Islands to be used by the mission there. That was the year when the first missionaries were sent to the Islands, and, in 1822, their language had been so far reduced to writing that the press came in use. It was the pioneer press there as well as later on this coast. It was a Ramage writing, copying and seal press, No. 14. After using it for twenty years the Hawaiian mission had grown so that it needed a larger one and consequently, the native church at Honolulu bought it, with type, furniture, paper and a few other articles, altogether valued at five hundred dollars, and donated it to the Oregon Mission of the American Board.

E. O. Hall, a practical printer at the Islands, came with it. His wife's health was quite poor and it was hoped that the voyage and the change would do her good, and, as there was no printer in Oregon he came also to teach the art of printing. On April 30th, Dr. and Mrs. Whitman and Mr. and Mrs. Spalding met Mr. and Mrs. Hall with the press at Fort Walla Walla (Wallula). By common consent it was taken on horseback to Lapwai, where on the 16th of May, it was set up, and on the 18th the first proof sheet was struck off. On the 24th a small booklet of eight pages in the Nez Percé language was printed. Lapwai remained the home of the press until 1846.

Mr. Hall remained in this country until 1840, when he returned to the Islands. By that time he had taught Messrs. Spalding and Rogers the art of printing so well that they carried on with the help of some of the Indians. In 1846 it was taken first to The Dalles and later to Hillsboro where it was used until 1849. Afterwards it was given to the Oregon Historical Society.

Cyrus Shepard, the third schoolmaster at Vancouver, writes from there on the 10th of January, 1835, giving his address as "North Latitude, 122 degrees, 39' West Longitude," to *Zion's Herald* in Boston suggesting that "A person be appointed in Boston to take charge of letters, books, or other articles, and forward them to the mission, in some vessel sailing to Oahu, one of the Sandwich Islands, to be left there in the care of George Pelly, Esq. These packages should be

addressed to 'Jason Lee,' and directed to the 'Care of John M'Loughlin, Esq., Chief Factor of the Hudson's Bay Company, at Fort Vancouver, Columbia River.' This gentleman has kindly offered to have anything that may be sent, carefully forwarded to the Fort by the Company's vessels, which touch at Oahu almost every month. You will please to give notice, in your paper, to our friends where they may leave letters, books, and other articles."

Mr. Franklin A. Buck (for many years a resident of Seattle) in his letters in *A Yankee Trader in the Gold Rush* writes from Tahiti in 1851. "The last day of our stay a tremendous crowd of natives arrived from all parts of the Island, and also from the other Islands, to attend the examinations of the schools." After his arrival back on the coast he further states the need of teachers on *this* coast, and says to his friends having children of school age, "Where I come from, Bucksport, Maine, the market is stocked with schoolmistresses. I will write and order one immediately." This was the same idea that prompted Asa Mercer to bring that boatload of splendid women to Seattle some years later. Mr. Buck further makes these sage remarks of our schools on this coast in the future: "What a mixed up society we shall be here one of these days! Descendants of all nations go to the public school together! I shall *always* be a Yankee and hail from Maine—our children will be distinctly 'Northwesters.'"

Professor Edmond S. Meany states in his *History of the State of Washington*[1]—"The best evidence that Washington is socially sound is the consistent attitude of the state toward the school and the church. It is insisted that the two shall be separate, but it is also provided that both shall be liberally and intelligently fostered.

"The State has recognized that every child is entitled to an education, and to that end most generous provision has been made. At first it was believed this duty was discharged when the *common* schools were properly supported. . . . The schools are all supported by a direct state tax, supplemented by the interest accruing from the large irreducible school fund and by special taxes levied in the larger districts. The schools have been effective and successful."

In Snowden's *History of Washington* is found, "The children of the early settlers in Washington, like those of the early settlers elsewhere, had but scant opportunity to attend school. The first schoolhouses were log cabins, furnished with rude desks built against the walls on two or sometimes on three sides, and rude benches made of puncheons, or sometimes of sawed lumber. In these rude school-

1. By permission of Macmillan Company, publishers.

houses a teacher was generally employed for three or four months during the winter; usually there was no summer term. Frequently the teachers could do little more than furnish instruction in reading, spelling, writing and arithmetic. Sometimes the preacher, if there was one in the neighborhood, was employed, and people then thought themselves fortunate in having a man of so much learning to instruct their children. In towns in all parts of the 'Old Oregon Country' excellent private schools often furnished the larger part of the educational advantages. The Catholic priests frequently started schools in which they were themselves the teachers for a time, until they could procure lay brethren, or the Sisters of some order to take charge of them. Such was the beginning of some of the institutions which are now the pride of that church in the state. The other denominations also started schools in a modest way.

"The books used in the early schools were of many kinds, and prepared by almost as many authors as there were children to use them. Often they had served for their parents, when they went to school, for schoolbooks in those days rarely went out of date. Fathers and mothers had found them good enough in their time; why shouldn't they be good enough for another generation?"

From another source it is learned that the early school superintendents were elected in many of the counties but that they generally rendered little service. They were required by law to visit the schools in their counties at least once a year, and to make reports which were to be filed in the office of the Governor and if convenient, to publish them in some newspaper for the information of the public. But acting Governor McGill, in his message to the legislature in 1860, complained that this requirement seemed to have been wholly disregarded.

In the *Washington Historical Quarterly* for October, 1925, John C. Lawrence, a former Superintendent of Public Instruction in the Territory says: "While the schoolhouses were crude and the seats generally homemade and equipment lacking, the pioneer conditions produced an *intensity* of *work* that gave nearly as much advancement in the few months of school during the year as the present year's work."

The first suggestion of financing the schools of the new country (Oregon, which included Washington) by the setting aside of *two* sections of a township seems to have come from John Quinn Thornton, Judge of the Supreme Court of the Colony (Oregon Territory). Judge Thornton started East by water in the interests of the Colony, and to present a memorial to Congress in regard to education. He

left eight days before the Whitman Massacre which occurred November 29, 1847. The memorial, dated May 25, 1848, follows:

"Your memorialist respectfully prays that your honorable body would make suitable provision for educational purposes, by setting apart for that object the 16th and 36th sections of each township, and also one entire township on the north side of the Columbia, and one on the south side of the same river, being so located, under the authority of the Territorial Legislature, as not to interfere with the rights of actual lawful claimants. . . ." Recorded in Senate Miscellaneous, 1st Session, 30th Congress.

Among the schoolbooks in use in Oregon in 1851 were the following: Sanders Series of Readers and Spellers; Thompson's Mental, Practical and Higher Arithmetics; Gale's Philosophy; Youth's Philosophy; Gray's Chemistry; Hitchcock's Geology; Wilson's History of the United States; Youth's History of the United States; Well's Grammar; Church Psalmists, Young's Choir, School Singer, etc.; Olney's Geography and Atlas-Quarto and Primary; Smith's Primary Geography; MacGregor's Bookkeeping; Comstock's Botany; Youth's Botany; and Natural History of Birds and Beasts. Probably there were more.

Ezra Meeker, in his *Seventy Years of Progress in Washington*, has this to say about those early schools: "The pioneers turned their attention to schools soon after they had a roof over their cabins. The first schools were often attended by but a few children and were not so much in the nature of 'public' schools as 'private' schools; but they served excellently."

Indeed, all through "the Oregon country," the first thought of these pioneer men and women was of schools for their children and a missionary was looked upon also as a schoolmaster. As an instance of this, in 1853, a Presbyterian missionary, J. A. Hanna, came to one of the embryo (Marysville—now Corvallis) towns of the Oregon country. Dr. John B. Horner, of the Department of History of the Oregon State College, in an article appearing in the *Portland Oregonian*, Dec. 18, 1932, gives us this picture of his meeting with the settlers:

"Mr. J. C. Avery says, 'Here comes my neighbor, Charles Johnson, a liberal minded man with a large family to educate.' He was introduced thus—

" 'Mr. Johnson, this is the Reverend Hanna, a Presbyterian minister. He has come with his wife to locate a church in our midst, and they will undoubtedly help us in establishing an institution of learning in this community.'

"Mr. Johnson says, 'Mr. Hanna, I maintain high respect for your particular brand of religion, which I understand is strong for good

schools, and I shall be glad to cooperate with you and friend Avery in establishing an academy or a college in our midst.'

"Mr. Dixon is introduced to the minister and he says, 'Mr. Hanna, your religious denomination, which bears the reputation of being 24 carats pure, stands strong for good schools. We firmly believe that your helpful influence in the establishment of a church, the development of the town, the upbuilding of the common schools and the promotion of an institution of higher learning in this community—all of which are already under discussion—will more than repay us for doing a small part in helping to place you in a position to be of immense value to the town.'

"And so the introductions went—and soon Reverend Mr. Hanna was one of the charter members to organize an institution of higher learning in the town."

WASHINGTON COMES INTO ITS OWN AS A TERRITORY

Probably no territory was ever formed with a population as small as that of Washington at the time of its organization in 1853. There were only 3,965 persons within its boundaries.

There are two distinct phases or periods in the history of the early schools.

1. Pre-territorial period. The time prior to March 2, 1853, and
2. Territorial period. From 1853 to 1889 when the territory became a state.

As early as 1850 a number of "paper towns" had been projected in this Territory and in that year Elijah White essayed to build upon Baker Bay a town which he named Pacific City; but it enjoyed an existence of but a year or two. To encourage settlers White represented that *schoolhouses* and other *attractions* might be found there. A Mr. Hopkins was engaged to teach in the imaginary schoolhouse—twenty-nine years later the town of Ilwaco was laid out on this site and Mrs. E. M. Lincoln was the first teacher.

By 1853 schools had been opened in several neighborhoods, but for obvious reasons there was no system of education established.

In Governor Isaac Ingalls Stevens' first message to the first legislature in 1854 he recommended a special commission to report on a school system, and that Congress be asked to appropriate land for a University; also that some military training should be included in the curriculum of the higher schools.

Such was Stevens' desire for the instruction of the people of the Territory that the first appropriation for a public library, $5,000.00, was expended by him. The report of the librarian for the year 1854

was that there were 2,130 volumes in it. Stevens said in his first message that he had taken care to get the best books in each department of learning, and that he had applied to the executives in every state and territory and to many learned societies to donate their publications. In 1871 the territorial library contained over 4,100 volumes, besides maps and charts.

The famous legislature of 1854 framed a school law, or rather Judges Lander, Monroe and Strong framed it, and the legislature accepted and enacted it. And, like so many of the acts so framed at that session, it proved quite sufficient for several years.

In that year there were sixteen organized counties in the territory, and the names were: Clarke, Walla Walla, Thurston, Lewis, Island, Pacific, Cowlitz, Pierce, King, Mason, Skamania, Clallam, Jefferson, Wahkiakum, and Chehalis, which is now Grays Harbor County. Of these, three had among their county officers a county superintendent of schools—viz. Thurston County, Elwood Evans; Lewis County, A. B. Dillenbaugh; and King County, Dr. Henry A. Smith.

Members of the first Commission on Education in 1854, in the Council (the upper house of the territorial legislature was called the Council until statehood) were B. P. Yantis and D. R. Bigelow of Thurston County and C. D. Bradford of Clarke County. In the House the members were C. H. Hale of Thurston County; Henry Crosbie of Clarke County and A. C. Mosley of Pierce County. D. R. Bigelow presented Council Bill No. 17, "An Act establishing a common school system in the Territory of Washington" on Wednesday, March 28, 1854.

The first territorial school law of Washington had its inspiration in the Oregon laws of 1849-1853. Oregon operated for some time under the Iowa law of 1839. This law of Iowa grew out of the Michigan legislation of 1827-1833 and the influence of the New England school laws is plainly seen in those laws of Michigan.[1]

These early common schools were financed by a tax annually levied and by fines arising from a breach of any penal laws of the territory. As yet there was no school fund from the sale of the 16th and 36th sections of each township until the same could be surveyed, a task covering many years. The commissioner of the land-office had also decided that the grant from this sale was not available until the territory should become a state.

County superintendents only were provided by the law of 1854, to be elected at annual elections. They were to file their reports with

1. "History of the Schools of Washington," Dr. Thomas William Bibb—a doctor's thesis in Library, University of Washington.

the governor. Gov. Henry C. McGill, after taking office, discovering that no reports or statistics were available from the schools, set out to see that some provision was made for the collecting of such data. Through his influence the legislature passed a bill in 1861 providing for a territorial superintendent of public instruction who would be chosen triennially by the legislature. His duty would be to collect such information as might be deemed important, reporting annually to that body, and supervising the expenditure of the school fund.

The honor of serving as the first Superintendent of Public Instruction fell to the lot of the Rev. B. C. Lippincott, a Methodist minister, who was principal of the Puget Sound Wesleyan Institute. The statement has been made that his report was unsatisfactory. However, it seems to have been as complete as it was possible for him to make and it was constructive. He acknowledges that his report was unsatisfactory because of the newness of the common school system and also because the law did not require the county superintendents to report to his office. This was the same complaint made by Governor McGill which was the cause of the creation of this office.

So poorly were school records kept that some of the teachers of thirty years or more ago were obliged to consult the treasurer's books in order to be able to draw a teacher's pension.

Lippincott made himself unpopular by his attitude towards the University and this was the fatal mistake which legislated him out of office. For, to get rid of him, the legislature voted the following year to discontinue the office.

In the author's opinion this was the time to have enacted a drastic law to compel teachers to report to the county superintendent and the county superintendent to report to the territorial superintendent of public instruction—no report, no warrant.

Ten years later an act approved November 29, 1871, provided that the territorial superintendent should be elected in joint convention of the legislature during that and every subsequent session. His duties were to disseminate intelligence in relation to the methods and value of education, to issue certificates to teachers, call teachers' conventions, consolidate the reports of county superintendents, recommend textbooks, and to report to the legislative assembly; for all of which he was to receive $300.

Under this law Dr. Nelson Rounds, a graduate of Hamilton University, became the *second* Superintendent of Public Instruction for the Territory—1872-1874. He was in the Methodist ministry for nearly forty years. During this time he was connected with several schools

and for four years was editor of the *Northern Christian Advocate*. He came west from Binghamton, N. Y., in 1868.

He came into office facing a very hard task, with a disorganized school system and his problem was as difficult as that of Dr. Lippincott's. Dr. Rounds' report of 1873 gave the first statistical material ever compiled for the territory, also a brief summary of the number of institutes that had been held. The great bulk of his report was on the value of moral training in the public schools. He also stated that it was very difficult to get material from the counties on which to base a report. Three teachers' institutes had been held, at Seattle, Vancouver and Walla Walla, the last being on December 27 and 28. At the convention held in Olympia a fourth institute was inaugurated.

FIRST STATISTICAL SCHOOL REPORT OF THE TERRITORY
by Dr. Rounds, 1872

County	School-houses	Schools Taught	Pupils Attending	Persons School Age
Chehalis	5	3	90	150
Clallam	1	3	57	114
Clarke	26	31	641	1390
Cowlitz	5	6	132	261
Island	6	2	80	150
Jefferson	3	3	134	259
King	8	8	213	556
Kitsap	5	5	92	180
Klickitat	2	3	66	114
Lewis	7	10	166	414
Mason	1	1	16	47
Pacific	3	4	115	239
Pierce	5	9	157	320
Snohomish	2	2	40	75
Skamania	2	2	28	45
Stevens	0	3	48	90
Thurston	17	21	500	970
Wahkiakum	1	1	13	25
Walla Walla	37	33	1035	2479
Whatcom	3	2	90	183
Whitman	0	0	0	0
Yakima	5	5	115	229

In 1873 the legislature passed a special act providing that the territorial superintendent should be appointed by the governor and confirmed by the Council.

John Paul Judson, 1874-1880, was the *third* Superintendent of Public Instruction. He was born in Prussia in 1840; his father emigrated to this country in 1845 and settled in Illinois, coming to the coast in 1853. It was largely through him that the 1877 law was passed, a law looking towards legislation which would meet adequately the needs of the territory.

His term was one of the most important in territorial history, be-

cause of its length—he served six years—because of the growth in professional spirit and usefulness through the county and territorial institutes; and because of the initiation of the Board of Education.

Dr. Jonathan S. Houghton, 1880-1882, was the *fourth* Territorial Superintendent of Public Instruction. He urged the legislature to place his office on a better basis. He asserted that the great flow of immigration had more than doubled the number of school districts in many of the eastern counties. He went on to say "The superintendent should visit a large number of school districts and talk with the people, who are willing to do all that is necessary to support our public schools, but in many instances they do not know what is really needed. I have found some who do not seem to understand that blackboards are really necessary in the schoolroom of today."

Charles W. Wheeler, 1882-1884, was the *fifth* Territorial Superintendent. He came to Washington in 1877 as principal of the Waitsburg schools. In 1879 he became superintendent of schools for Walla Walla County from which position he moved up to the territorial superintendency. He called attention to the importance of the teachers' institutes saying, "While the Territory of Washington is without a Normal School, teachers' institutes must, as far as practicable, supply its place." He implored the passage of a law to hold institutes and that teachers be required to attend when they were held. The law was so amended. He recommended the establishment of a normal school in the territory, and seems to have been the first superintendent to make such a recommendation.

R. C. Kerr, 1884-1886, was the *sixth* Territorial Superintendent. He introduced no outstanding changes in the administration of the schools. The most interesting item in his report is his statement of the rapid growth of the school population. "We have now teaching in our schools, graduates from nearly every normal school, college and university in the United States and Europe and thus receive the benefit of the accumulated wisdom and learning of all of these old institutions of instruction."

J. C. Lawrence, 1886-1888, was the *seventh* Superintendent of Public Instruction. He came from Ohio to Whitman County in 1878, where he taught school. He served as county superintendent of schools there in 1882-1883. Mr. Lawrence urged normal schools and better trained teachers and he advanced strong arguments for free textbooks, which seems to have been the first recommendation on this question. He suggested changes in the school law. One of them was that children be not allowed to enter school until aged six. He also served at other

times as superintendent of schools of Olympia, Port Townsend and Spokane Falls.

J. H. Morgan, 1888-1889, was the *eighth* and last to fill the office as Superintendent of Public Instruction for the Territory. He made two reports, one in 1888 and one in 1889. The latter, the last one before statehood, contained many splendid suggestions and was especially valuable from the statistical standpoint. It is given in part in this book. He had been county superintendent of schools in Walla Walla County in 1885 and was long a teacher. Members of the Board of Education in 1889 were: J. H. Morgan, Superintendent of Public Instruction, A. L. McBride, Palouse City; L. E. Follansbee, Olympia; H. J. Swim, Lynden; W. B. Turner, Spokane Falls.

Prof. Frank F. Nalder, of Washington State College at Pullman pays this tribute to Mr. Morgan:

"Way back in the days of my early boyhood, back indeed in its very juvenile stages, I first saw Mr. Morgan. One of a handful of country urchins assembled in the little schoolhouse that stood on a high knoll among the foothills of the Blue Mountains in Walla Walla County, I remember sitting, open-mouthed, dangling my bare legs from an unpainted bench while 'Teacher' presented to us the County Superintendent of Schools. I remember admiring him, and thinking to my little self, 'How does it feel to be great like that?' And now, after a lapse of years, I still feel it must be wonderful to be great like he is.

"I remember his standing in that little schoolhouse and urging upon us girls and boys the eternal principles of school life, high deeds, duty, and opportunity."[1]

ESTABLISHING AND EQUIPPING THE SCHOOLS

Mr. A. C. Voelker says, "The usual procedure for forming new districts or changing boundary lines was by means of a petition to the county superintendent on the part of the persons interested, stating their prayer and its justification.

"School districts in the county were numbered consecutively in the order in which they were formed. During the first few years after the organization of the Territory, they were fashioned in the following manner: A group of settlers interested in the education of their children would call a meeting of the heads of the families in the neighborhood, elect directors, secure a place for holding a school,

1. Mr. Morgan is now (1933) a resident of Seattle and the last living territorial superintendent of public instruction.

raise money by taxation or voluntary contributions for the support of the school, employ a teacher and open a school.

"Boundaries were often designated by the corners of a man's barn, by a large tree, hill, rock or stream."[1]

The history of the books used in the first schools shows this question to have been a serious problem and one which was discussed for years. At the first meeting of county superintendents, called on Dec. 7, 1854, and held the first Monday in January, 1855, the discussion of this matter was the most important subject. The cost of books had to be thoroughly considered as the settlers were poor and unable to pay much for them, and the distance to the markets from which they had to be procured was great.

Some schools in 1846 had "made" books, long rolls of what seemed to be printed newspaper which had to be folded sewed and pasted. One pioneer woman, Mrs. Marianne Hunsaker D'Arcy, said: "We went to bed, leaving Mother folding, sewing and pasting our books by the light of the open fire and tallow candles: in the morning on the table were our books. Oh! such lovely books! covered with a piece of our mother's worn-out calico dress, her prettiest dress, I thought. No city boy or girl could be more pleased with their nice new books than we were. And the rapture of it! Such cute thumb-papers in each! What boy or girl now-a-days knows what a thumb-paper is? Simply a piece of paper folded in fanciful shape. Happy were those who could boast a pretty colored one that would be too good for everyday use. In holding our books while studying, the paper rested under the thumb and saved wearing the book."

Every reader of this book is under obligation to Mr. Voelker for the best, most interesting and vivid description of these primitive schools. He tells us: "The water bucket, tin cup, and wash basin, comprised the 'water system' of the old country school. The school that had a good well on the premises was indeed fortunate. Very often the teacher would reward good deportment by appointing well-behaved pupils to bring the water from the nearest neighbor, and by permitting a pupil to pass the bucket around the room so that the pupils could quench their thirst from the community drinking cup. Once there was reported that a teacher reprimanded a pupil for bringing an individual drinking cup from home for his own use. Drinking from the community cup was part of the training for democracy, and the teachers weren't aware that the community drink-

1. Thesis of Augustus C. Voelker, B. S., Drake University 1898. "A Study of the Development of the Common School in Pierce County, Washington." In library at College of Puget Sound, Tacoma, Wash. 1933.

ing cup was largely responsible for the spread of mouth and throat diseases throughout a school. The school toilets (if any) were usually located in the rear opposite corners of the school yard, and at their best were unsanitary.

"The 'blackboard', if the school fortunately possessed one, was often of cedar boards, smoothed and fitted together, and covered with black paint. In some schools this board was placed diagonally across the corners of the room forming a triangle with the walls, and it frequently happened in District No. 7, (Pierce County) that for punishment the evil-doer was placed in the dark corner thus formed until he promised to correct his evil ways. A good authority states that one schoolmaster who was addicted to the tobacco chewing habit would use the improvised corner to conceal a cuspidor, to which he would make frequent trips during the course of a recitation. The early schools had limited blackboard space which was used chiefly by the teachers in illustrating to the class the lesson under discussion. . . . For blackboard writing, the teachers had only soft, dusty hemispheres of chalk that today are used by tailors and carpenters. The pioneer teacher had a small hand bell to call the pupils from play to their work. The early schools had no reference works, no libraries, few maps and charts, and generally speaking there were no pictures on the walls. Mrs. M. A. O'Donnell, one of the pioneers of Pierce county (Mrs. O'Donnell was a pupil in District No. 2 in the sixties and a teacher in the county in the seventies), gives a glimpse of one phase of early school equipment in the following words: 'We had no nice lead pencils and tablets furnished by the district but our arithmetic and spelling had to be done on slates. If one happened to be so unfortunate as to drop a slate and break it into fragments, he not only would cause a great disturbance in the schoolroom, but he would probably be obliged to get along the rest of the term without a slate. When the parents were not well-off financially, as was the case in our home, it was a misfortune to lose a pencil or break a slate.'"

That the hunger for knowledge and books extended well back into the beginnings of the territory is illustrated by the account of George H. Atkinson, a missionary, who in 1848, brought $200 worth of school books with him to Oregon Territory. Afterwards he imported $1,700 worth more. These books sold quickly for "ready pay."

The routine of study, in the country schools especially, had to be adapted to whatever textbooks were available. The hours were from the time the bell rang at nine o'clock until four, with an hour at noon and a fifteen minute recess in the middle of the forenoon and again in the afternoon. The classes were usually in about this order:

9 a. m.—A. B. C. or primer class, first reader, second reader, third reader, primary arithmetic, second arithmetic, primary spelling, second spelling, writing in Spencerian copy book (if the pupil had one, otherwise teacher set the copy). Noon. Afternoon—A. B. C. or primer class, first reader, second reader, third reader, fourth reader, primary geography, second geography, grammar (often one pupil in a class), United States history (often one in a class).

The author often offered older boys, who had been kept out on the range away from school, and were embarrassed to be in classes with their younger brothers and sisters, the privilege of having lessons during recess, noon, or after school. Some were glad to have this personal attention but preferred to recite at recess or noon. After school seemed too much like being "kept in." At recess or noon it appeared that they did not care to play with the smaller children.

"Before 1878 promotions were not made at the close of the school year," says Voelker, "but whenever the teacher considered the class ready for advanced work. The school year was short and the older pupils attended only when there was no work for them on the farm. A class would 'go through' a book, and if the teacher decided that the pupils did not have the subject well enough in hand, the class would 'go through' the book again. Classification of new pupils by a teacher would often be passed on how many times the pupil had 'gone through' a certain book. These accounts are written that the present 'half century of progress' may know how the children of the first half of the century went to school in Washington Territory."

CONVENTIONS, INSTITUTES, BOARD OF EDUCATION

"The two greatest forces for the advancement of civilization are the schoolmaster and good roads," said Charles Sumner.

Ever since educational leaders were first organized about 1870 the educators themselves have been framers of the school laws of Washington. Teachers' organizations or conventions were for the betterment of themselves and the educational system. They became powerful bodies about the end of the territorial period.

The history of teachers' organizations in the territorial years may be divided into three distinct periods:

The first was centered about the problem of finding suitable texts and establishing new unanimity. This period found practical evidence in the convention called at Olympia by D. R. Bigelow, in 1868.

The second period had as its aim the passage of a better school law. This was in evidence in the educational association of 1873 and

the early Washington teachers' institutes, the first of which met in 1876.

The third aimed at better instruction in the schools. The institutes turned their attention later almost entirely to the matter of better teaching methods and administration of schools.

As early as December 7, 1854, an advertisement appeared in *The Pioneer and Democrat*, which said,

"A call to the superintendents of the common schools in this territory. It is proposed by several of the superintendents that we convene at this place, Olympia, on the first Monday in January, next, at 4:00 o'clock p.m. at the Methodist church for the purpose of making an effort to bring about uniformity as to schoolbooks in this Territory. We hope that there will be a full attendance."

—(Signed) *J. F. Devore.*

The same newspaper published the result of that meeting on January 6, 1855. Only two superintendents were present, J. F. Devore of Thurston County and George F. Whitworth, Pierce County, who signed for their counties. There was no formal meeting but recommendations were drawn up favoring uniform books.

The first territorial convention was called by the county superintendent of Thurston county, D. R. Bigelow, to consider educational questions. It was held January 4, 1868, at Olympia.

A second territorial convention was held January 4, 1869. In the meantime the teachers of Clarke County had met July 18, 1868, and organized a county meeting to be monthly.

The "Education Association" of 1873 was called at Olympia on October 22. The Hon. Orange Jacobs, Chief Justice of the Territory, called the meeting to order and was elected its president. It was the aim of the association to be permanent but no record has been found of another meeting.

The first Washington Teachers' Convention, or Institute, met at Olympia, July, 1876, at the call of the Hon. J. P. Judson, Superintendent of Public Instruction, who urged zealous and harmonious action toward securing a proper and efficient legislation. It was composed of county superintendents and teachers from all over the Territory and met to decide on changes necessary to be made in the school laws.

A committee was appointed to draft a new school law to be submitted to the next legislature for adoption. J. P. Judson, J. E. Meeker, Rev. George F. Whitworth, Mrs. A. J. White, and Mrs. J. B. Allen were appointed.

The second annual meeting was held in Seattle, July 18, 1877, to still consider a new school law. Those present were: Rev. G. F. Whit-

worth, E. S. Ingraham, Rev. Daniel Bagley, C. D. Young, Miss Hattie Young, Mrs. H. Pierce, M. W. Thayer, Rev. J. F. Ellis, Miss Lena Smith, Miss Eugenia McConaha, and Rev. D. W. Macfie from Seattle; R. E. Ryan, superintendent of Jefferson County, from Port Townsend; C. O. Bean and Miss Frances Meeker from Pierce County; J. E. Clark from Olympia. With this meeting we have the inception of the idea of improvement of teachers in service.

A third meeting was held on October 10, 1877, at Olympia. This special meeting was presided over by J. P. Judson, and continued in session four days, reading, considering, altering, amending and perfecting the proposed school law. The attendance was large. E. S. Ingraham, superintendent of King County, O. S. Jones, assistant secretary and Rev. George F. Whitworth were present from Seattle. In due time the proposed law was submitted to the legislature and after very few alterations by that body it was enacted as the school law of the Territory.

The work accomplished at this session established plainly the service of educators in the improvement of the educational system of the Territory. The character of later territorial institutes changed; it was no longer necessary to work for betterment of the laws; methods of teaching became the keynote. A meeting in Olympia, October 1878, and the meetings of 1879 and 1880 show the same trend.

LATER TERRITORIAL INSTITUTES

The character of the later institutes changed. No longer were educators working for revision in the law as the Act of 1877 was the culmination of a long struggle to put an adequate organization into operation.

To the student of the methods of teaching the proceedings of the fifth meeting at Seattle, a pamphlet of eighty-eight pages, is a very valuable contribution. At this 1880 meeting the institute split into an eastern and western division in order to make it possible for all teachers to attend.

Mr. J. E. Clark was secretary of this meeting. He took a very active part and seemed to dominate the sessions. It was due to his interest and energy that a limited number of the pamphlet was printed. It is credited to him and may be found in the Northwest history collection at the University of Washington Library.

Following is a part of his address, in which he quotes from William B. Fowle:

"The true teacher is more than an ordinary officer of the civil

government; he is an officer of that supreme administration which is superior to civil power. He must deal with the plastic mind of immortal beings, drilling them for that irrepressible conflict between right and wrong which, no doubt, will always exist in every civilized society.

"The faithful teacher, on every plane, has much to do, and much to endure. He must be contented to labor and be ill-rewarded; he must be willing to see his pupils increase while he decreases; and even to see the world, whose movement he has accelerated, leaving him behind. No matter;—the school of life lasts not long and its best rewards are reserved till school is over. When Jupiter offered the prize of immortality to him who was most useful to mankind the court at Olympus was crowded with competitors. The warrior boasted of his patriotism, but Jupiter thundered. The rich man boasted of his munificence, and Jupiter showed him a widow's mite. The Pontiff held up the Keys of Heaven, and Jupiter pushed the doors wide open. The painter boasted of his power to give life to inanimate canvas, and Jupiter breathed aloud with derision. The sculpter boasted of making gods that contended with the immortals for human homage. Jupiter frowned. The orator boasted of his power to sway an audience with his voice, and Jupiter marshaled the hosts of heaven with a nod. The poet spoke of his power to move even the gods by praise. Jupiter blushed. The musician claimed to practice the only human science that had been transported to Heaven. Jupiter hesitated. When, seeing a venerable man looking with intense interest upon the group of competitors, but presenting no claim; 'What art thou?' said the benignant monarch. 'Only a spectator,' said the gray-headed sage, 'All these were once my pupils.' 'Crown him, crown him!' said Jupiter, 'crown the faithful teacher with immortality, and make room for him on my right hand.' "

At the meeting of the western division at Tacoma, August 16, 1881, the chief emphasis was again placed on better teaching and a resolution to support the university was passed.

In 1884 the territorial institutes were held at Dayton on August 4, and Tacoma, August 18th. The *School Journal* of October, 1884, said: "I notice with pleasure that the two divisions of our territorial institute have unanimously agreed to consolidate and that the next meeting will be held at Vancouver in August, 1885."

At that joint institute at Vancouver the matter of school law was again taken up, but only minor changes were recommended. R. C. Kerr, then territorial superintendent, recommended in his report that the law be so amended as to require a normal institute for each judicial district presided over by a member of the Territorial Board of Education from that district, or a council district institute. This recommendation was adopted by the legislative assembly and four judicial district institutes were held in 1886. These were: The first judicial district at Colfax, attendance 60; second at Olympia, attendance 50; third at Seattle, attendance 100; fourth at Spokane Falls, attendance 50.

In 1887 they were held at Walla Walla, North Yakima and Tacoma. The one that was planned for Port Townsend was not held. In 1888 they were held at Waitsburg, Olympia, Port Townsend and Spokane Falls. These were all held as normal institutes, in addition to the county institutes, to improve teachers in service.

STATE TEACHERS' ASSOCIATION

In response to a call issued by the Thurston County Teachers' Association a large number of the teachers of western Washington assembled in Olympia on Tuesday, April 3, 1889. One day and two evening sessions were held and much interest was manifested and various subjects presented, a program having been prearranged.

During this meeting the organization of a State Teachers' Association was effected. The officers of the Thurston County Teachers' Association were made the temporary officers. The officers elected for the ensuing year were as follows: President, J. H. Morgan of Ellensburg; Vice-presidents, R. C. Kerr of Walla Walla, R. B. Bryan of Montesano, H. O. Hollenbeck of Seattle, W. B. Turner of Spokane Falls, L. H. Leach of Vancouver; Secretary, Miss Nettie Moore of Spokane Falls; Treasurer, Miss A. Cushman of Tacoma; the executive committee was F. B. Gault of Tacoma, J. L. McDowell of Ellensburg, and Miss Hilda Engdall of North Yakima. The legislative committee was composed of Mrs. P. C. Hale, and L. E. Follansbee of Olympia, R. E. Ryan of Leland, and Miss Julia Kennedy and O. S. Jones of Seattle.

In a report of the formation of this organization it was said: "It is expected that the Association will subserve the best interests of the educational cause throughout the new state, not only by the mutual improvement resulting from the meetings of the association, but by securing wise legislation through its legislative committee. The next meeting of the association will be held during the Christmas holidays at Ellensburg. As this is a central point a large attendance is anticipated."

Henry S. Dewey in his *History of Education* says of this same meeting: "Headed by Superintendent B. W. Brintnall on behalf of the

Olympia teachers the first association meeting was held in the Capital City, April, 1889. J. H. Morgan of Ellensburg, Territorial Superintendent of Public Instruction, and W. B. Turner of Spokane were the only Eastern Washington representatives. Others prominent were Superintendent B. F. Gault of Tacoma, R. B. Bryan of Montesano, J. M. Taylor of the Territorial University, Superintendent L. H. Leach of Vancouver, Miss Julia Kennedy, superintendent of Seattle schools, Professor Tait of Tacoma, and others."

Teachers' organizations had their origin in early territorial times and the State Teachers' Association was but a continuation of the earlier legal body which went out of existence with the coming of statehood. These associations were working bodies which sprang up in addition to the institutes. Just before statehood there was a number of these which were as follows: County associations in Chehalis (now Grays Harbor), Whatcom, Whitman, Garfield, Spokane, Walla Walla and Pierce counties as well as the Bellingham Bay Teachers' Association.

EDUCATIONAL PUBLICATIONS

The first educational magazine in Washington was *The School Journal*, established at Dayton in April 1884, by F. W. McCully. Mr. McCully was one of the prominent schoolmen of his time and was principal of the Dayton schools for seven years.

The second educational publication was *The Northwest Teacher*, published at Olympia, by L. E. Follansbee in 1886. It lived about four years. At the organization meeting of the State Teachers' Association in April, 1889, this magazine was made the official organ of the association. It had quite an extensive circulation through the territory among the teachers and accomplished much good in its line of work.

The Northwest Journal of Education was established in Seattle by P. C. Richardson about September, 1889. After *The Northwest Teacher* suspended publication it was made the official organ of the Washington State Teachers' Association at its third annual meeting at Spokane Falls. Mr. Richardson came from Chambersburg, Pa., was a graduate of Williams College and was the first principal of the (new) Central School in Seattle in 1889, which is still standing at Seventh Ave. and Marion St.

BOARD OF EDUCATION

The first Territorial Board of Education was appointed in 1877 and met April 1, 1878. It was composed of Superintendent John P.

Judson, the Hon. Thomas Burke of King County, Charles Moore of Whitman County and Miss Ruth E. Rounds of Clarke County. They did much good work.

An extract from the provisions of the law of 1877 which formed this board is given here:

"Title 11, section 10—The governor shall appoint, by and with the advice and consent of the legislative Council, one suitable person from each judicial district, who together with the territorial superintendent shall constitute the Territorial Board of Education, who shall hold their offices for two years.

"Section 11—The meetings of the board shall be held annually, at Olympia, on the first Monday in April."

One of the great weaknesses of the law of 1854 was that it did not provide for a centralized control of the educational system. It was not till after 1871 when a territorial superintendent was permanently provided for, that a focussing point for county reports and statistics came into existence. It was through the efforts of Mr. Judson that the above law was passed. Through the board a widening in the powers of the central control of the schools was effected, much to their benefit.

A brief synopsis of all board meetings and appointments thereto from 1878 through 1889 as taken from the records on file at the Department of Education in Olympia may be found in the Appendix.

GRADED SCHOOLS AND HIGHER EDUCATION

It was not until the eighties that any serious and concerted attempt was made to grade schools in the territory. A time-yellowed newspaper clipping from a Walla Walla paper gives an account of the work accomplished as a result of action taken by the Territorial Institute at its annual meeting, evidently about 1881. The clipping is from some paper printed in 1882 as nearly as can be judged by corroborative details. It shows the vast contrast between the schools then and the uniformity of courses throughout the whole United States as we know them today.

"A COURSE OF STUDY

"By a law, our last Legislature (1881) created a score of new graded schools in our Territory. What these schools shall be, depends upon industry of teachers, the enthusiasm of school boards and the concurrence of parents. If all these schools could be started under a uniform plan, they would not only move forward with greater enthusiasm and profit, but an immense saving of time and expense would be effected to children passing from one town to another. A graded school is simply an effort to divide the labor to be performed into systematic parts, to lessen the labor and increase the benefit. If the three grammar departments of Walla Walla are united in one, each class can have treble the time allotted to its work, with no increase of expense. But if Walla Walla adopts one system, Dayton another, Spokane

and Cheney a third, great confusion will ensue to families moving from one town to another. This thought prompted the Territorial Institute, recently held at Spokane, to appoint a committee to draft a course of study for its consideration, the same to be presented to the Western division at Olympia, and finally referred to the Territorial Board of Education, with the hope that while the ensuing terms will be directed somewhat by it, a final satisfactory course may be agreed upon during the year.

"The committee reported a course, with the privilege of revision within a few days, meanwhile consulting with all available authorities, especially the Portland and California.

"As the scholar enters school when seven years of age, a steady attendance will fit him for high school by the time he is fourteen, and the school course is accordingly extended for eight years, each year constituting a grade and each grade divided into two sections, designated 'B' and 'A'.

"The first four years are styled the Primary Department, the four last the Grammar Department. . . .

"A single feature worthy of special notice is the arrangement of a series of general exercises through the entire eight years' course, as it is believed, in a natural (history) course, which may be profitably adopted by every country teacher, with slight modifications. All scholars sometimes become fatigued with the routine of recitation.

"A general exercise, in which each may pleasantly struggle for mental supremacy, stirs the sluggish blood and is the best possible cure for insubordination. If these general exercises can be systematically arranged, thought is crystallized around certain centers and direction is given to the life.

"It is the early impressions that decide all after life. A love of science leads to a scientific course, and objects of interest brought to the attention quicken the power of observation and reveal new worlds of thought about us. . . .

"The committee have aimed to suggest such an order of exercises as will quicken the pupil's interest and lead him, step by step, into the different beauties of Nature's kingdom.

"The following are the general divisions proposed for the different grades:

"First year—B Section—General talks on colors and forms. A Section—Fishes and fowls, trout, salmon, chickens, ducks, etc.

"Second year—B Section—Familiar animals and insects, lamb, calf, horse, fly, bee, ant, etc. A Section— Leaves and flowers, shape, color, structure, etc., illustrated.

"Third year—B Section—Geometrical forms, squares, triangles, cubes, pyramids, etc. Lessons in place, the schoolhouse yard, street, etc. A Section—Roots and stems from trees, plants, herbs, etc., brought in by the children.

"Fourth year—B Section—Seeds and fruits, nuts, peaches, pears, cherries, etc. A Section—General review of all previous lessons.

"In the Grammar Department the mind begins to reason more carefully. The reason why is always demanded. The following order is believed to meet this requirement:

"Fifth year—Lessons in natural philosophy, explanation of things about us, rising of smoke, falling of dew, movements of clouds, flowing of springs, etc.

"Sixth year—Lessons in physical geography, forms of continents, peculiarities of climate, range of animals, difference of races.

"Seventh year—Science of government, our own school officers, town officials, county, state and U. S. officials. A weekly newspaper or a daily would be a valuable textbook in connection with books on the constitution.

"Eighth year—Studies of the human body, comparison of arms, feet, eyes, ears, etc., with those of different animals; explanation of digestion, muscular exercise, etc.

"These suggestions are submitted, not as a finality, but with the hope that

practical teachers and friends of education will offer suggestions, changes, objections, etc., and that our schools will be roused to the proper enthusiasm in connection with their regular work.

"(Signed) D. J. Pierce,
Augusta Bunker,
and J. H. Morgan, *Committee.*"

Probably the first high school in the Territory was in 1881 at Dayton, although no information on this fact is found in the superintendent's report for 1883. The report of that year shows that there were only fifteen graded schools in the Territory and in 1881 there were none. Throughout the Territorial period we hear of "High Schools" but there can be said to have been no public schools of this grade before the one mentioned above.

The first high school in Seattle was organized by Superintendent E. S. Ingraham in 1883. There was much opposition to the idea at that time on the part of the taxpayers, who saw no need for higher education, and on this account it was not officially recognized as a high school. Mr. Ingraham called the high school work "Higher grade" work. According to official reports there were six high schools by the time Washington became a state. They were of little importance during the territorial period, and their history properly belongs to the history of State education.

The high school controversy brought forth many newspaper discussions varying greatly in their views regarding the schools in general during the eighties. Herewith is an article, amusing to this generation, which "views with alarm" the possible ill effects of higher education upon the coming generation:

EDUCATION BY THE STATE

"Just now the school question is again under discussion. A gentleman just from New England, in a brief, concise communication to *The Oregonian*, states the views which have come to prevail there of late on this subject. He says:

"'The last half dozen years has witnessed quite a change of sentiment on this question in New England, and particularly in Massachusetts, where the existing system originated. It is now about forty years since Horace Mann inaugurated the plan of education by the state up to the academic standard, and they began to reap its fruits. And the opinion is wide-spread, and spreading in that section, that its fruits are evil—that the average of intelligence, thought and mind in the community is below that of forty years ago. That is witnessed, they say, in various ways—notably in the character of public speeches and addresses then and now. It is remembered that then there had to be mind and thought in a lecture or address to draw an audience, and that when one ventured before the public it was in a production worthy of constituting a platform or a creed. Now, it is maintained that the country swarms with voluble small fry orators and lecturers, who with weak commonplace and little nothings assemble large and satisfied audiences, where only empty benches would have greeted them in the past. It is urged, too, that the

TAB 16

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HISTORY AND DEVELOPMENT OF COMMON SCHOOL LEGISLATION IN WASHINGTON

by

DENNIS C. TROTH

A Thesis submitted in candidacy for the degree of
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II.

COMMON SCHOOL FUND

1. School Support Before 1854

Education was left unmentioned in the Federal Constitution, and the tenth amendment left the matter entirely to the states. This amendment reads:

Article X. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."[56]

The Organic Act of Congress creating the Territory of Washington was approved March 2, 1853, and in section twenty of this act provision is made that sections sixteen and thirty-six of public lands in every township shall be reserved for common school purposes.[57]

The few scattered and primitive schools prior to the Territorial legislature of 1854, were supported by private subscriptions, missionary support, and in rare cases by mutual local taxation, as was the case of support of the school at Olympia. When the first session of the legislature of the Territory of Washington was convened in Olympia on February 27, 1854, the first governor, Isaac Ingalls Stevens, appeared before the body with the first gubernatorial message. In that document is found the following paragraph:[58]

"The subject of education already occupies the minds and hearts of the citizens of this Territory, and I feel confident that they will aim at nothing less than to provide a system which shall place within the means of all the full development of the capacities with which each has been endowed. Let every youth, however limited his opportunities, find his place in the school, the college, the university, if God has given him the necessary gifts. Congress has made liberal appropriations of land for the support of the schools, and I would recommend that a special commission be instituted to report on the whole system of schools. I will also recommend that Congress be memorialized to appropriate land for a university."[59]

By an act of the first territorial legislature provision was made that the principal of all moneys accruing from the sale of any land given by Congress for school purposes, or which may hereafter be given by Congress for school purposes, shall constitute a permanent and irreducible school fund; the interest accruing from such moneys shall be divided annually among all the school districts in the territory, proportionately to the number of children between the ages of four and twenty-one living in each district. It was specified that this money should be used for the support of common schools and for no other purpose whatsoever. But, owing to the fact that no public land commission had been provided by the legislature for the territory no immediate money from this source was received.[60]

The following table shows the states receiving township section school grants for public schools:[61]

[56] Constitution of the United States, Article X.
[57] The Organic Act, 1853, Section 20.
[58] Dewey (H. B.), *History of Education in Washington*, 1909, p. 7.
[59] *Ibid.*
[60] *Laws of Washington*, 1854, pp. 319-20.
[61] Swift (F. H.), *Federal Aid to Public Schools*, 1922, Bulletin No. 47, p. 10.

FEDERAL LAND GRANTS FOR COMMON SCHOOLS

(States and sections in each congressional township)

TABLE I

Group 1. States receiving Section No. 16

	Acres		Acres
Alabama	911,627	Louisiana	807,271
Arkansas	933,778	Michigan	1,021,867
Florida	975,307	Mississippi	824,213
Illinois	906,320	Missouri	1,223,813
Indiana	668,578	Ohio	724,366
Iowa	988,196	Wisconsin	982,329

Group 2. States receiving Sections Nos. 16 and 36

California	5,534,923	Nevada	2,061,967
Colorado	3,685,618	North Dakota	2,495,396
Idaho	2,963,698	Oklahoma	1,373,000
Kansas	2,907,520	Oregon	3,399,360
Minnesota	2,874,951	South Dakota	2,732,064
Montana	5,190,258	Washington	2,376,397
Nebraska	2,720,951	Wyoming	3,478,009

Group 3. States receiving Sections Nos. 2, 16, 32 and 36

Arizona	8,093,156	Utah	5,844,196
New Mexico	4,355,667		

TOTAL (not including Alaska) ..... 73,135,075 acres, or 114,304.8 square miles

Alaska reservations[62] (sections 16 and 36) ..... 21,009,209 acres, or 32,826.8 square miles

GRAND TOTAL ..... 94,154,284 acres, or 147,131.6 square miles

Three states, Arizona, New Mexico, and Utah, have received from the Federal Government, for the support of public schools, sections 2, 16, 32, and 36 in each township.

The following table shows the states receiving no Federal land grants for common schools.[63]

EIGHTEEN STATES WHICH RECEIVED NO FEDERAL LAND GRANTS FOR COMMON SCHOOLS

TABLE II

The thirteen original states and five admitted later.

Connecticut	New Jersey	Virginia
Delaware	New York	Vermont (1791)
Georgia	North Carolina	Kentucky (1792)
Maryland	Pennsylvania	Maine (1820)
Massachusetts	Rhode Island	Texas (1845)
New Hampshire	South Carolina	West Virginia (1863)

2. County and District Support

In the absence of any available funds from school lands at this time for the purpose of establishing and maintaining common schools, the county commissioners of each county were authorized by an act of the legislature to assess an

[62] Reserval but not granted; area estimated.
[63] Swift (F. H.), *Federal Aid to Public Schools*, 1922, Bulletin No. 47, p. 9.

annual tax of two mills on a dollar, on all taxable property in the county. All money collected from this source was appropriated for the hire of school teachers. In addition to the two mill levy by the county commissioners, the first territorial legislature gave authority to district meetings, legally called, to levy a tax upon the property of the district for any purpose whatever, connected with, and for the benefit of public schools, and the promotion of education in the district.[84]

Special taxes were made possible to meet the deficiencies in the current school funds of the different counties and districts of the territory by an amendment to the school law of 1854, approved January 30, 1858, in which provision was made whereby any legally called school meeting, by a majority vote of the legal voters subject to school tax, could vote to levy a special tax not to exceed twenty-five cents on the one hundred dollars valuation on the taxable property of the district, for school purposes.[85] The county tax was changed a number of times to meet emergencies. Three mills on the dollar was authorized in 1860.[86]

Another scheme for raising local school funds which apparently was carried over from pre-territorial times by the legislature of 1860 and enacted into law, was that of authorizing the directors to assess parents or guardians of children attending school for their portion of the necessary expense of sustaining the school, in the way of tuition, fuel, and the like, in proportion to the number of children sent by each.[87]

For further support of common schools, the county treasurer was required to set aside all money received by his office arising from fines for breach of any penal laws committed in the territory. The money received from this source was added to the yearly school fund raised by tax, and apportioned in the same manner.[88]

During the Civil War when the territory became burdened with financial obligations, school finances suffered and as a measure of relief the legislature of 1861 enacted a law authorizing the county commissioners of any county, when they were convinced that the welfare of the common schools demanded it, to sell the lands within their respective limits, which had been donated by Congress for school purposes.[89] This land was to be sold in subdivisions of not more than one hundred and sixty acres, to the highest bidder, at the minimum price of one dollar and twenty-five cents per acre.[90] The moneys received from these lands were to be loaned out at the legal rate of interest. The law specifically states that the principal should not be reduced but should be a perpetual fund for school purposes only.[91] If there was no school district within the limits of the township in which the land was sold, the voters, by a two-thirds vote could appropriate the money received from the sale of the land to the

[84] *Laws of Washington*, 1854, p. 325, Section 6.
[85] *Ibid.* 1858, p. 22, Section 21.
[86] *Session Laws*, 1860, p. 34.
[87] *Ibid.* 1854, p. 320.
[88] *Laws of Washington*, 1860, p. 316, Section 19.
[89] *Ibid.* 1861, p. 31, Section 1.
[90] *Ibid.* 1861, p. 32, Section 3.
[91] *Ibid.* 1861, p. 32, Section 4.

support of schools in the districts convenient to them. This last provision was not applied to Whatcom, Klickitat, Skamania, Pierce, Chehalis, Clark, and Walla Walla Counties until later.[92]

Two years later, January 23, 1863, provision was made whereby the county commissioners, under certain conditions, could sell certain school lands at private sale for not less than one dollar and fifty cents per acre. Such sales were confined to persons who were rightfully in possession of any part or parts of sections sixteen and thirty-six previous to the public survey.[93] This protection to the possessor was provided for in the Donation, or Pre-emption Act.[94]

In January, 1868, the need for funds became so general throughout the territory that an act was approved allowing the directors in any school district, after the public money was expended, to levy a special tax not exceeding two mills for sustaining a school in that district, upon a petition signed by a majority of all the parents and guardians of the scholars and resident property holders paying taxes in such districts.[95]

On November 29, 1871, another law was approved to take effect January 1, 1872, which raised the annual tax for schools to four mills on the dollars. The law also gave districts power to levy taxes for school purposes additional to the four mill tax.[96]

A law approved November 14, 1873, repealed all preceding acts in relation to common schools, and enacted a new law with the following changes in regard to school funds: (1) Provision was made for levying a tax of not more than four mills; (2) the new law restricted the power of district meetings to levy a district tax, "for any purpose whatsoever connected with and for the benefit of schools and promotion of education in the district," to "a tax not exceeding ten mills on a dollar for the purpose of building and repairing school houses;"[97] (3) it requires voters in districts to be taxpayers as well as residents;[98] (4) repealed the compulsory feature of the former law.[99]

An act approved November 9, 1877, relative to the public school system of the Territory of Washington gave boards of directors of any school the privilege, when they deemed it advisable, to submit to the qualified school electors of such district the question of whether a special tax, which should not exceed ten mills, should be raised "to furnish additional school facilities for the district or to maintain any school or schools in the district, or for building one or more school houses, or for removing or building additions to one already built, or for the purchase of globes, maps, charts, books of reference and other appliances or apparatus for teaching, or for any or all of these purposes."[100]

[92] *Ibid.* 1861, pp. 32-33, Section 8.
[93] *Ibid.* 1863, pp. 476-7.
[94] Donation Act, Section 9.
[95] *Laws of Washington*, 1867-8, p. 18, Section 1.
[96] *Session Laws*, 1871, pp. 13-14.
[97] *Laws of Washington*, 1873, p. 431, Section 4.
[98] *Ibid.* p. 435, Section 20.
[99] *Ibid.* p. 436, Section 31.
[100] *Laws of Washington*, 1877, Title XV, Section 81, pp. 280-1.

Again in 1881 the directors of school districts composed of incorporated towns or cities were authorized to levy a special tax not exceeding ten mills in any one year, when in their opinion it was necessary for building school houses.[81] The same legislature made provision for levying a special tax, not to exceed five mills, in any one year, for tuition purposes.[82] In 1883 a law was enacted making it the duty of the county commissioners to levy a tax of not less than three mills nor more than six, for the support of common schools.[83] When more money was needed for additional school facilities school directors could submit the question of an additional levy to the qualified voter.[84]

The last territorial legislation affecting school funds was enacted by the legislature of 1886 whereby the county commissioners were required to levy a tax of not less than three mills nor more than six, for establishing and maintaining public schools.[85] In case further funds were needed for building purposes or equipment the directors were authorized to place the question before the qualified voters for a decision in the matter.[86] School laws, regarding school funds, have been passed at nearly every session of the territorial legislature from 1854 to 1889, but the object aimed at has been but slightly changed.

The legislature of 1889-90 made it the duty of the county commissioners to levy a tax of not less than four nor more than ten mills for school purposes. The district directors were authorized to levy a tax of five mills. A higher levy than five mills required a majority vote of the district. This could not exceed ten mills.[87]

In 1891 the minimum county levy remained at four mills but the maximum levy was reduced to six mills.[88]

The county school tax was again changed in 1897 by authorizing the county commissioner to levy a tax not to exceed eight mills for school purposes. The district levy remained, the minimum at five mills, and the maximum at ten mills.[89]

In 1901 school directors were authorized to levy a special tax not to exceed ten mills for the purpose of furnishing additional school facilities for their district. No tax exceeding five mills could be levied until such levy was ordered by a majority vote of the electors of the district, at a special election. The boards of directors of union districts could levy a special tax not to exceed three mills, and the levying of such tax by union school district boards could not prevent the electors of any district within such union district from levying a tax of ten mills.[90]

In 1903 a law was enacted which prohibited the annual expense of a district

[81] *Ibid.* 1881, p. 25, Section 4.
[82] *Ibid.* 1881, p. 25, Section 5.
[83] *Ibid.* 1883, p. 17, Section 58.
[84] *Laws of Washington*, 1883, p. 21, Section 80.
[85] *Ibid.* 1885-6, p. 20, Section 58.
[86] *Ibid.* 1885-6, p. 25, Section 80.
[87] *Ibid.* 1889-90, p. 451, Section 52.
[88] *Ibid.* 1891, p. 309, Section 74.
[89] *Ibid.* 1897, p. 107, Section 63.
[90] *Ibid.* 1901, p. 361, Section 17.

from exceeding the annual revenue. The county commissioners were authorized to levy not to exceed three mills, the proceeds of which constituted a special fund for the payment of the district indebtedness. The same law authorized the county commissioners to levy a tax not to exceed eight mills in rural districts. In districts of ten thousand or more population a ten mill levy was authorized. Two more mills could be levied by a vote of the district. The county commissioners were also authorized to levy a tax of one-tenth of one mill for library purposes.[91]

For the purpose of school sites, buildings, furnishings of, and so forth, and the creating of a sinking fund for the payment of indebtedness, the directors were authorized, in 1907, to expend, in cities having a population of more than ten thousand and less than fifty thousand, a sum not exceeding fifty thousand dollars; in cities having a population of not less than fifty thousand, nor more than one hundred thousand, a sum not exceeding one hundred thousand dollars; and in cities having a population exceeding one hundred thousand, a sum not exceeding two hundred thousand dollars. When a greater expenditure was required, in any one current school year, the question was submitted to a vote of the district. The board of directors had power to proceed to condemn and appropriate sufficient land for a school house site not to exceed five acres in extent.[92]

In cities of ten thousand or more inhabitants, the aggregate tax should not exceed one per cent in one year, provided, the board of directors, by unanimous vote of all the members, could determine upon a greater tax, not exceeding two per cent.[93]

In 1909 the legislature enacted a law which was a long step in equalizing taxation and educational opportunities within the various counties of the state by requiring the county commissioners to levy a county tax sufficient to produce ten dollars for each child of school age, providing the tax shall not exceed five mills. Two-thirds of this revenue is apportioned on the basis of actual days' attendance, and the remainder on the basis of the number of teachers employed.[94]

In 1909 a large increase in both county and district levy was authorized. The school boards of districts of the first class were authorized to levy a school tax not to exceed one per cent of the assessed valuation of the district. When a greater expenditure was necessary the matter was submitted to a vote of the district. The maximum of a special levy was two per cent of the assessed valuation of the district. The same law applied to districts of the second class and of the third class.[95]

In 1917 the county commissioners were authorized to levy a tax not to exceed two mills, against all non-union high school districts for the purpose of educating non-resident high school pupils.[96]

[91] *Laws of Washington*, 1903, p. 439, Section 1.
[92] *Ibid.* 1907, p. 41, Section 4.
[93] *Ibid.* 1907, p. 42, Section 5.
[94] *Ibid.* 1909, p. 332, Section 5.
[95] *Ibid.* 1909, Chapter 97, p. 368.
[96] *Ibid.* 1917, Chapter 7, p. 68.

Table III. (continued)

Stevens	77,701.24	15,589.15	62,112.09
Thurston	24,171.13	9,846.60	14,324.53
Wahkiakum	8,671.54	2,965.85	5,705.69
Walla Walla	47,611.80	25,596.96	22,014.84
Whatcom	29,563.82	10,112.53	19,451.34
Whitman	78,661.40	47,339.15	31,322.25
Yakima	131,989.94	14,772.69	117,217.25
Totals	1,968,578.50	518,306.32	1,450,272.18

5. STATE AID FOR COMMON SCHOOLS

Immediately after Washington Territory became a state, in 1889, there were among the leaders of the people of our new state men who looked forward to the realization of their dreams of a well organized system of common schools enjoying financial support from the state.

The new state had had the advantage of the experience of other states in educational matters, and its leaders had learned to perceive the true meaning of education as an influence molding state and national life. They looked to the diffusion of light, through education, as the resource most to be relied on, for promoting the virtue and advancing the happiness of the citizens of the state. The idea of an intellectual aristocracy was not in their minds. A system of general instruction was desired, which would reach every description of citizen.

The early educational leaders of our state accepted the Jeffersonian doctrine of democracy in education, and regarded it as an economic question, believing that ignorance will in the future cost more in consequence than would have been the cost of proper education. An educated citizen will produce more revenue and be less likely to become a liability.

It is on the theory of an investment, and an economic necessity, that the state assumes that it is its duty to protect itself from ignorance and its consequences—that it can justify the imposition of state taxes for public education. It was on the basis of this theory that in the State of Washington education early found a place in the evolution of the democratic idea of government.

The state's larger view of the function of government than that of mere police protection, to which Spencer's doctrine would apparently limit it, was forcibly expressed by the introduction of a bill into the legislature in 1895 and enacting it into law which became known as the "Barefoot School Boy Law." This law authorizes the State Board of Equalization to levy annually, when levying state taxes, a sufficient tax which, when added to the fund derived from the permanent school fund, would amount to six dollars for each census child between the ages of five and twenty-one living within the state.[163] This fund was apportioned to the different districts on the basis of the number of children in each district. This gave a system which operated uniformly throughout the state, whereby each school district would share in the state fund, the state tax, the county tax, and it gave each district the option of levying a district tax. The State Board of Education was authorized to levy a tax, not to exceed four mills,[164] to meet this obligation.

[163] *Laws of Washington*, 1895, Chapter LXVIII, p. 122, Section 1.
[164] *Ibid*, 1895, p. 123.

Since enacting the "Barefoot School Boy Law" the state has, in the matter of public education, quite definitely refuted the doctrine enunciated by Herbert Spencer in 1950 that "the taxation of one man's property for the purpose of educating another man's children is robbery, and that the state has no more right to administer education than it has to administer religion," but it has rather followed Macauley's doctrine that "whoever has the right to hang has the right to educate."

In 1899 the legislature increased the state aid from six to eight dollars per census child by authorizing the State Board of Equalization to levy for this purpose a tax not to exceed five mills.[165]

The legislature of 1901 again authorized the State Board of Equalization to levy a tax not to exceed five mills[166] which should raise the state support, in the same manner, to ten dollars per census child. When the new school code was passed by the 1909 legislature, the tax levy for ten dollars per census child[167] was again passed by the legislature and approved by the governor.

A growing conviction that education is a duty of the state as expressed in Article IX, Section I of the State Constitution is evinced by the rapid successive increases in state aid and especially by an act of the legislature in 1920,[168] which provided for state aid in the same manner as it was provided in 1895, 1899, and in 1901, to the amount of twenty dollars per census child; an increase of one hundred per cent in state aid given. The legislature in this case placed no limit on the levy necessary as was done in previous cases.

To prevent a possible misconception of state aid for school purposes, it should be stated that the support provided by the "Barefoot School Boy Law" of 1895, the two dollar increase secured in 1899, the two dollar increase again secured in 1909, and the ten dollar increase secured from the state in 1920, does not mean that these have been wholly new financial supports for education. As state aid was increased from time to time the local district tax, where it had become burdensome, was privileged to decrease its burden. Thus we see that it was the purpose of the legislature to shift, in a large measure, the unequal burden of educational finance to the state where it becomes equalized.

TABLE IV

The Respective Percentages of School Revenues Contributed by the Several States as Such in 1920[169]

1. Texas	54.0	11. Vermont	33.1
2. Mississippi	52.1	12. Utah	31.5
3. Alabama	51.3	13. North Carolina	30.1
4. Georgia	43.5	14. Nevada	26.6
5. Maryland	41.6	15. Louisiana	24.5
6. Kentucky	37.1	16. Wyoming	24.3
7. Virginia	36.7	17. Arkansas	23.7
8. New Jersey	35.6	18. California	20.4
9. Maine	35.6	19. Minnesota	19.5
10. Delaware	33.3	20 Arizona	18.7

[165] *Laws of Washington*, 1899, Chapter CXLII, Section 19, p. 320.
[166] *Ibid*, 1901, Chapter CLXXVII, Section 16, p. 380.
[167] *Ibid*, 1909, (sub.) Chapter IX, Section 3, p. 321.
[168] *Laws of Washington*, 1920, Chapter 2, Section 1, p. 15.
[169] *Washington Educational Journal*, April, 1923, pp. 233-4.

ment. Each succeeding legislature adds new duties and new responsibilities for the Superintendent of Public Instruction.

The Superintendent of Public Instruction is designated by statute as a member of certain state boards and commissions, and vested with responsibilities and duties additional to those required as the head of the State Department of Education.

These boards and committees with the official position of the Superintendent of Public Instruction are as follows:

State Board of Education—president.

State Board for Vocational Education—chief executive officer.

State Library Committee—chairman.

State Humane Bureau—member.

State Archives Committee—member.

State Agricultural and Rural Life Commission chairman.[168]

It is the duty of the superintendent to issue certificates as provided by law, to keep on file all books and papers pertaining to the business of the office, to child records of statistics pertaining to educational interests of the state, to keep records of meetings of the State Board of Education. It becomes his duty to decide points of school law which may be submitted to him, and to publish his decisions, which are final unless set aside by a court of competent jurisdiction. It is the duty of his office to prepare a State Manual of Washington and distribute the same according to law.[169]

The State Superintendent of Public Instruction shall apportion from the annual state fund to union high schools the sum of $100 for each grade above the grammar grades, provided high school was maintained for six months during the last preceding year. Such high school grade must consist of not fewer than four pupils who have completed the work of previous grades and must have an average daily attendance of not less than three pupils.[170]

3. TERRITORIAL BOARD OF EDUCATION

The educational system of early territorial days, like the laws under which it operated, grew up in a more or less haphazard manner to meet the most imperative needs of a rapidly increasing population and rapidly changing conditions.

At the beginning, the schooling of the children was left wholly to the initiative of local communities, and perhaps rightly so for the reason that differences in social and industrial conditions, the customs, predilections and ideals of the people made the educational needs of the territory essentially diverse. Moreover, a central body of any kind was too remote to act effectively as a stimulating and regulating agency. The first central body designed for the administration of the schools was the Territorial Board of Education which came into existence under the law of 1877. This board was appointed by the governor, who appointed as a member one person from each judicial district to serve for a term of two years. In 1883 the appointment required the confirmation of the senate.[171] The territorial superintendent was ex-officio chairman of this board.[172] The territorial office was located in the home town of the territorial superintendent, and from 1877 to 1889, when Washington became a state, the office had been located in Olympia, Goldendale, Waitsburg, Port Townsend, Garfield and Ellensburg.[173] In 1889 it was located permanently in Olympia.

[168] Twenty-sixth Biennial Report of the Superintendent of Public Instruction, June, 1922, p. 6.
[169] *Laws of Washington*, 1909, p. 231, Section 3.
[170] *Ibid.* 1903, Chapter 104, Section 3, pp. 181-2.

The first Territorial Board met at Olympia April 1, 1878, and gave notice of a meeting for the adoption of text books for use in the common schools of the territory, formulated the rules and regulations for the board of examiners, examinations and promotions, defined the duties of teachers, the duties of pupils, outlined the course of study in the subjects of language, arithmetic, geography, reading, writing, spelling, composition, drawing, music, morals and manners, and management.[174]

The territorial legislature outlined the powers and duties of the Territorial Board of Education as follows:[175]

1. Meet at Olympia on the first Monday of April, annually.
2. The Board shall have power:
   (a) To adopt territorial text books for the common schools.
   (b) Prescribe rules for the general government of the public schools as shall secure regular attendance, prevent truancy, secure efficiency and promote the true interest of the schools.
   (c) Prepare or cause to be prepared blank forms for reports of teachers, directors, county superintendents and for other necessary purposes.
   (d) The Board shall have general supervision of the Territorial Normal Schools whenever the same shall be established by law.
   (e) To use a common seal.
   (f) To sit as a Board of Examination at their semi-annual meeting and grant territorial certificates.
   (g) To revoke territorial certificates for cause.
   (h) To grant territorial certificates on certificates or diplomas of equal rank from other states and territories.
3. Prepare examination questions semi-annually to be used by county boards in the examination of teachers.
4. Certificates granted by the Board may be revoked for immoral or unprofessional conduct.
5. Territorial treasurer shall pay for stationery and printing authorized by

[171] *Laws of Washington*, 1883, p. 5, Section 10.
[172] *Ibid.* 1877, Title II, p. 261.
[173] Twenty-third Biennial Report of Superintendent of Public Instruction, 1916, p. 9.
[174] *Ibid.* 1920, p. 37.
[175] *Laws of Washington*, 1877, pp. 261-3.

the Board, also the necessary expenses of the Board shall not exceed $200 annually.

6. Vacancies shall be filled by the Governor by appointment.

On November 28, 1883, a new law went into effect which fixed the salary of the territorial superintendent at six hundred dollars and allowed a sum not to exceed three hundred for expenses. The territorial Board had been increased to five members corresponding to the judicial districts.

The legislature of 1886 increased the total expenses allowed to the Board not to exceed $500 annually. The membership of the Board was increased in 1886 one member on account of the judicial districts having been increased one district.[177]

4. STATE BOARD OF EDUCATION

When Washington Territory was admitted into the Union as a state in 1889 there followed, by virtue of her new status, changes in her school system. The manner of selecting the State Board of Education was somewhat modified. The appointments were made by the governor to be approved by the senate.[178] Two of the members were to be selected from among the qualified teachers actually teaching in the common schools.[179] The term of office of the state superintendent of public instruction was increased to a four-year term. The state superintendent, by virtue of the office being held, became president of the State Board of Education.

An important additional duty of the office of state superintendent, over and above that of the territorial superintendent, was that of preparing a course of study for the common schools of the state which had previously been made by a committee for that purpose in the various counties.

It was provided that the Board meet annually, and for special meetings at the call of the state superintendent.

Duties.—1. The Board was empowered to adopt a uniform series of text-books for the use of common schools throughout the state.

2. To prepare a course of study for the common schools, except graded schools, and to prescribe general rules and regulations for the government of the schools as shall secure regularity of attendance.

3. To adopt an official seal.

4. To grant state certificates and life diplomas. State certificates were made valid for five years.

5. To prepare a uniform series of questions to be used by county boards of examiners in the examination of applicants for teaching.

In case of a vacancy in the Board by death, removal, resignation or otherwise the governor should fill the vacancy by appointment.[180]

[176] Twenty-fifth Biennial Report of Superintendent of Public Instruction, p. 38.
[177] *Laws of Washington*, 1889-90, Title III, Section 6, p. 430.
[178] Twenty-fifth Biennial Report of the Superintendent of Public Instruction, 1920, p. 12.
[179] *Laws of Washington*, 1889-90, p. 353-4.

The Board remained appointive and consisted of four members to serve for a term of two years.

5. BOARD OF HIGHER EDUCATION

In 1897 there was created a board of higher education, consisting of the president of the University of Washington, the president of the State Agricultural College and the principals of the state normal schools,[180] whose power and duty it was to adopt courses of study for normal schools, adopt the preparatory requirements for entrance to the University of Washington and to the Agricultural College; to adjust the courses so as to place the state institutions in harmonious relations with the common schools and with each other; and to unify the work of the public school system.

Another of the duties of the State Board of Higher Education was to prepare questions for the examination of the teachers of the state. The work of grading teachers' manuscripts and issuing certificates was done by county boards until 1897, when a law became effective whereby teachers' manuscripts were sent to the state office to be graded and the certificates issued therefrom. In 1903 the state eighth grade examinations were put into operation. The questions were sent from the state office, but the grading was done by the county boards, as it is now.

The legislature of 1909 abolished the Board of Higher Education, as its mission had been fulfilled. At this time a new school code was enacted for the state which gave us our present Board of Education.

The new board was constituted in a different manner from that of the previous board. The new board was composed of the president of the University of Washington, the president of the Washington State College, the principal of one of the state normal schools, to be elected by the principals of the normal schools, and three other persons holding life diplomas issued under authority of the State of Washington, actually engaged in educational work, one of whom must be selected from among the county superintendents of the state, one to be a superintendent of schools in a district of the first class and the other member to be selected from among the principals of the four year fully accredited high schools of the state.[181]

Powers and Duties[182].—The newly organized State Board of Education was empowered with authority and duties similar to those which had been conferred upon the Board of Higher Education. The powers and duties of the new board were as follows:

1. Approve preparatory requirements for entrance into the University of Washington, into the State Agricultural College, and the state normal schools.

2. To approve courses for the normal training departments in all institutions of higher learning in the state; the graduates from such courses being eligible to receive professional certificates or life diplomas.

[180] *Laws of Washington*, 1897, Section 24, p. 366.
[181] *Ibid.* 1909, p. 234.
[182] *Ibid.* 1909, p. 326.

3. To investigate the quality of work required for entrance to the University of Washington, the State Agricultural College, and the state normal schools, and other schools that are permitted to grant certificates and diplomas recognized by the state department.

4. To prepare a list of schools in other states granting life diplomas and life state certificates upon which certificates may be issued by the superintendent of public instruction of this state.

5. To inspect and accredit secondary schools in the state.

6. To inspect, and accredit, if proper, the normal training department of other institutions of higher learning in the state.

7. To prepare an outline of study for each department of the common schools of the state and to provide a system of rules and regulations for their government.

8. To prepare examination questions for teachers' examinations and to prescribe rules governing examinations.

9. To prepare answers for the examination questions.

10. To prepare uniform series of examination questions to be used in examination of pupils who are completing the grammar school course, and to prescribe rules governing the examinations.

11. To hear and decide appeals from the decision of the superintendent of public instruction.[183]

In order to comply with the Smith-Hughes Act, in creating a State Board for Vocational Education the legislature of 1917 conferred upon the existing board the powers and duties of a State Board for Vocational Education.[184]

Because of criticism arising as the result of duplication of courses in the various institutions of higher learning in the state, the legislature of 1917 specified the major lines of instruction to be offered in each of the institutions.

It was provided that the courses of instruction of the University of Washington shall embrace as exclusive major lines, law, architecture, forestry, commerce, journalism, library economy, marine and aeronautic engineering, and fisheries.[185]

It was provided that the courses of instruction of the State College of Washington shall embrace as exclusive major lines, agriculture in all its branches and subdivisions, veterinary medicine, and economic science in its application to agriculture and rural life.[186]

Provision was made that courses of instruction of both the University of Washington and the State College of Washington shall embrace as major lines, liberal arts, pure science, pharmacy, mining, civil engineering, electrical engineering, mechanical engineering, chemical engineering, home economics, and professional training of high school teachers, school supervisors, and school superintendents. These major lines shall be offered and taught at these institutions only.[187]

[183] *Session Laws*, 1909, p. 320.
[184] *Laws of Washington*, 1917, p. 834.
[185] *Ibid.* 1917, Section 2, p. 34.
[186] *Ibid.* Section 3, p. 34.

The courses of instruction for the professional training of teachers for elementary schools were given over exclusively to the normal schools.[188]

ADVANTAGES OF THE STATE BOARD OF EDUCATION

In Article IX, Section 1 of the State Constitution the state recognizes that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders". Such a duty recognizes that a certain body to exercise supervision over the schools of the state is essential. The doctrine that the taxable property of the entire state should educate the children of the state has been generally accepted. A complete state educational system, therefore, is essential, and a State Board of Education with liberal powers, and opportunity for discretion in matters of detail, is an indispensable part of such a system.

One of the greatest advantages to be derived from a State Board of Education is systematic organization of the educational forces of the state. System means economy, the elimination of waste, immediate action to meet unexpected emergencies, orderly progress. The development of system characterizes all progress, particularly all industrial progress. Business men are quick to see the advantages of it, as is illustrated by any progressive and successful industrial corporation.

The superintendent needs the board of education for some of the same reasons that the executive officer of an industrial corporation needs a board of directors.

A State Board of Education should give to the school system an expansiveness that is highly desirable and that could hardly exist without it. With some discretion in matters of administrative detail it would enable the system to adjust itself more or less automatically to the changing educational needs and conditions of a growing commonwealth.

[187] *Ibid.* 1917, p. 34, Section 4.
[188] *Session Laws of Washington*, 1917, p. 35.

V.

CERTIFICATION OF TEACHERS

1. EARLY CERTIFICATION

The history of our common school system as revealed by a study of legislative enactments from territorial days to the present time shows a constant movement toward higher standards in educational requirements and an expansive policy in school development. Perhaps in no department is this more strongly marked than in the certification of teachers.

At the time of the organization of the territorial school system, in 1854, the county superintendents, only, were authorized to grant certificates for one year based on an examination in certain required subjects.[286] From 1857 to 1871 school directors were authorized to judge of the qualifications of teachers. A certificate from the board of directors of any district was regarded as sufficient evidence of the qualifications of teachers employed by them.[287]

On January 24, 1859, the legislature required the district directors, when they chose to pass on the qualifications of teachers, to examine them in orthography, reading, writing, arithmetic, English grammar and geography. Such a certificate was good for a term of three months.[288] In 1861 an attempt was made at establishing a higher educational authority with powers of certification by providing for a territorial superintendent of schools to be elected triennially.[289] Because of difficulties in coordinating the work of the office, dissatisfaction arose and the act creating the office was repealed and the office discontinued in January, 1862.[290] Directors seldom examined teachers and the law of 1871 does not recognize the right but provides that directors require applicants to be certified by the territorial or the county superintendent.[291] These conditions arose, no doubt, because of the slow settlement of the country, inconvenience of transportation, and the increasing need of teachers and schools in the scattered and isolated districts. On January 1, 1867, the subject of history was added to the subjects required in teachers' examinations. At the same time the county superintendent was authorized to make a distinction in certificates, granting certificates of qualification to teach in specific districts, and not a county certificate, such certificates were good for six months.[292]

The office of territorial superintendent was discontinued in January, 1862. In November, 1871, the legislature recreated the office of territorial superintendent[293] of schools and authorized the office to issue certificates upon examination, which were good in the entire territory. The county superintendents

[286] *Laws of Washington*, 1854, p. 231, Section 5.
[287] *Ibid.* 1857, p. 34, Section 3.
[288] *Ibid.* 1859, p. 310, Section 7.
[289] *Laws of Washington*, 1861, p. 55, Section 1.
[290] *Ibid.* 1861-2, p. 20, Section 1.
[291] *Ibid.* 1871, p. 21, Section 5.
[292] *Ibid.* 1867, p. 27, Section 6.
[293] *Ibid.* 1871, pp. 12-13, Section 1.

continued to issue certificates which were good in their respective counties only. In 1873 English composition was by law added to the required list of subjects for the examination of teachers for certification.[294]

2. CERTIFICATION IN 1877

In 1877, a very material change took place in the certification of teachers. A Territorial Board of Education made its appearance[295] which issued territorial certificates of two classes,[296] while the county superintendent was authorized to grant first, second and third grade certificates, valid only in the respective counties. Experience in teaching was required, also, as a prerequisite to higher certification. Educators from other states were coming in, for we find that the Board of Education was authorized to grant, at their discretion, without examination, certificates to persons presenting valid "diplomas or certificates from other states" of like grade and kind. A county examining board was provided for, consisting of the county superintendent of schools and two persons holding the highest grade of certificate in the county.[297] In 1877 the subjects of School Law and Theory and Practice of Teaching were added to the list in which prospective teachers should be examined for certification.[298]

Up to 1885-86 practically no further changes were made, but at that time another step upward was taken. The University of Washington Territory was accredited and examining boards were authorized to grant certificates without examination to graduates of the Normal Departments of the University, as well as to those of other states holding certificates of like grade and kind. At this time also, teachers were required to know and to teach hygiene in the schools.[299] A law was passed in 1888 requiring that certificates should not be granted to candidates under eighteen years of age.[300]

From statehood up to the present date, the standard of certification has never been lowered and the tendency has been always toward higher educational requirements. But at all times, care has been taken to preserve the validity and standing of the certificates and diplomas earned and granted under previous territorial and state enactments.

3. CERTIFICATION IN 1897

In 1897, a new Code of Public Instruction was passed which materially modified the law relative to the certification of teachers by the state.[301] Teachers' certificates authorized by the state in 1897 consisted of the following:

1. (a) Life diplomas, valid during the life of the holder. (b) State certificates, valid for five years. Life diplomas and state certificates were

[294] *Laws of Washington*, 1873, p. 424, Section 6.
[295] *Ibid.* 1877, p. 261, Section 10.
[296] *Ibid.* 1877, p. 262, Section 11.
[297] *Ibid.* 1877, p. 265, Section 25.
[298] *Ibid.* 1877, p. 283, Section 88.
[299] *Laws of Washington*, 1885, p. 29.
[300] *Ibid.* 1888, Chapter CXIII, p. 200, Section 2.
[301] *Laws of Washington*, 1897, Chapter CXVIII.

VII.

HIGH SCHOOLS

The modern high schools of Washington had their beginning in the system of graded schools that were established in the seventies. When communities grew populous enough to have their schools graded, many added such subjects as algebra and bookkeeping to the common branches. Although high schools were flourishing in other states, the report of the Commissioner of Education in 1877 contained nothing concerning high schools in Washington Territory. For years, however, the University had maintained a high school department to prepare students for college.

The legislature of 1877 provided for union, or graded[328] schools in which instruction should be given in the higher branches. Also the Board of Education, created by the same act, was given authority to prescribe rules for the general government of the public schools,[329] and among other things it classified these union schools as primary, intermediate, grammar and high schools. The curriculum of the junior class of the high school included algebra, English, and analysis throughout the year, physiology, and zoology the first half, philosophy and bookkeeping the second half. The senior curriculum included geometry and history throughout the whole year, with botany and the United States Constitution the first half and astronomy and chemistry the second half. Rhetorical exercises were given throughout the whole high school course.[330]

In 1881, the legislature enacted a law to the effect that no language other than English and no mathematics higher than arithmetic should be taught in these schools.[331] This clause met with bitter opposition everywhere and the next legislature made provision permitting these subjects to be taught in graded schools maintained by incorporated cities.[332] Again, in 1885, Latin was eliminated by an act of the legislature.[333]

There is no information to be found in state and national reports concerning high schools in the territory between the years 1881 and 1889; however, a few such schools were in existence. A Seattle school report shows that a high school was started in that city in the year 1883 and that the first class was graduated in 1886. The school for the first year had a registration of fifty-six, which is evidence that there was a public demand for a high school. This, as far as can be learned, was the first regularly organized public high school in the State of Washington. Only a three-grade high school was at first maintained, and no foreign languages were taught.

It might be interesting to note in this connection that high schools had no legal status in Washington during its territorial days, nor during its statehood,

[328] *Laws of Washington*, 1877, pp. 277-8.
[329] *Ibid.* 1877, p. 262, Section 11.
[330] Report of Superintendent of Public Instruction, 1879, pp. 16-22.
[331] *Laws of Washington*, 1881, p. 27.
[332] *Ibid.* 1883, p. 18, Section 63.
[333] *Ibid.* 1885-6, p. 22, Section 63.

until the year 1895.[334] All public money spent in the maintenance of high schools during this period was illegally spent, but illegally spent as it was, high schools in the territory and state notwithstanding grew in number, their scope of work was made more comprehensive, and their efficiency increased. The people demanded them, and the legality of their support was never questioned until the spring of 1893, when a few overburdened taxpayers in the city of Seattle (times having grown hard) threatened the city school board with an injunction should it continue the illegal expenditure of the city's money in the support of high school. Because of threatening legal entanglements, the high school was abolished by action of the school board.

As soon as the action of the board became known to the public, friends of the school instituted a campaign to have the board rescind its action if possible. The best legal talent of the city was summoned to help devise some scheme or plan whereby the school could be legally reopened and continued.

Two weeks later, at the termination of the vacation, the school was brought back into official existence under the name of "The Senior Grammar School of Seattle," under which name it operated until 1895, when the legislature of that year passed an act giving high schools their first legal status in Washington.

At the time of its abolishment, the Seattle high school had a registration of 264 pupils in a city of 45,000 population, or six high school pupils to every one thousand inhabitants.[335] At present, 1925, Seattle has an enrollment of 13,168[336] high school pupils out of a population of 411,578[337] inhabitants, or thirty-one high school pupils to every one thousand population.

In the course of time parts of the state were becoming densely populated and the management of school was becoming a complex problem. In 1890, a law was passed making all incorporated cities of 10,000 or more inhabitants, individual districts, each having its own board of education, consisting of five members having the power to adopt and enforce such rules and regulations as might be necessary to establish and maintain such grades and departments (including night schools) that would best promote the interests of education in the district.[338]

The larger high schools were now free to put what they chose into their curricula. A glance at the curricula of the high schools in 1891 shows that such academic subjects as algebra, geometry, minerology, and ethics were offered. Most schools maintained only three-year courses. Olympia, however, gave a thorough Latin preparatory course in addition.[339]

The next biennium shows the curricula divided into distinct courses, the typical ones being Classical, Scientific, English, Commercial, and Industrial

[334] *Laws of Washington*, 1895, Chapter 150, p. 375.
[335] Twenty-sixth Biennial Report of the Superintendent of Public Instruction, 1922, pp. 293-4.
[336] Information obtained from the office of the Superintendent of Seattle Public Schools, July 2, 1925.
[337] *Seattle Daily Times*, Information Bureau, July 2, 1925.
[338] *Laws of Washington*, 1889-90, p. 455, Title XIV, Section 64.
[339] Tenth Biennial Report of the Superintendent of Public Instruction, 1890, pp. 50-55.

TAB 17

SPOKANE FALLS REVIEW: WEDNESDAY MORNING, JULY 12.

WASHINGTON SCHOOLS.

Pertinent Suggestions to the Constitutional Convention by the Board of Education.

Provisions for the Government of the Schools and Disposal of Lands and the Funds.

The provision for the government of schools was prepared on the 10th inst. by the territorial board of education, and placed in the hands of the committee on education and educational institutions, to be presented to the convention. It was prepared by Prof. W. B. Turner of Spokane Falls, and signed by every member of the board. Following is a synopsis of the provisions:

The legislature shall provide for a uniform range of education, from the primary grade to the university, and for intermediate and high schools, as necessity requires to preserve unity of system, and provide for their liberal maintenance.

All teachers' certificates, diplomas and contracts to hold good under the state the same as under the territory.

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All teachers' certificates, diplomas and contracts to hold good under the state the same as under the territory.

Besides the income from the school and public lands, which shall constitute the fund at interest, to be applied to the support of schools, the public school fund shall be the proceeds of all lands that may be granted for educational purposes by the United States; appropriations for educational purposes by the state; proceeds of the estates of all persons who die intestate, or any other property that may accrue to the state by any escheat or forfeit; all property granted to the state when the purpose of such grant is not specified; all moneys which may be paid as exemptions from military duty; all fines which may be collected under the penal laws of the state, and such portions of the poll tax as may be prescribed by law. No part of the fund to be transferred or used for other purposes.

The state treasurer shall be custodian of the fund and the same shall be profitably invested by a commission, to consist of the state superintendent of public instruction, the secretary of state and the state treasurer.

The state shall supply all losses from the fund that shall occur in any way.

The legislature may provide for special local school funds by levying a tax of not more than 5 mills.

A direct tax of not less than 1 mill, in addition to other sources of income, shall be levied, which may be reduced to ½ of a mill if deemed advisable.

THE SALARY

and term of office of the state superintendent of public instruction shall be equal to that of the secretary of state. He shall be elected by the people, and the requirements for eligibility to be not less than now.

The board of education shall consist of five persons, of which the state superintendent shall be a member ex-officio, four members to be appointed by the governor from different sections on a non-partisan basis. Eligibility required to be the same as for state superintendency. The duties of the board to be much the same as now and the members to be considered as successors of the present board.

The university of Washington shall be a public trust. In addition to the usual classical, scientific and literary courses, the schools shall include agricultural colleges and colleges of mining and mechanical arts, and military tactics shall be a feature of all. They shall be free from political and sectarian influences and open to both men and women.

The legislature shall establish, as soon as practicable, one normal school.

The length of the school term shall be at least six months, for all children between the ages of 6 and 21 years.

The apportionment of the school funds shall be based on the enrollment and attendance, all districts, however, to have $300 per year.

The next section provides for reapportionment of unused funds and the distribution of same to schools, as an incentive to keep open longer than six months.

All children between the ages of 8 and 16 years must attend public schools at least three years, unless educated by other means.

Provision is also made for the education of the blind and deaf and dumb, and the establishment of reformatory institutions.

The legislature may provide that women may vote at school elections and be eligible for school offices.

THE SCHOOL LANDS

THE SCHOOL LANDS.

The following letter prepared by W. B. Turner, of Spokane Falls, a member of the territorial school board, was presented to the committe on state, school and granted lands:

OLYMPIA, July 12.

"To the Honorable Committee on State, School and Granted Lands, Gentlemen: We, the undersigned members of the territorial board of education, respectfully ask to incorporate in your report the following suggestions, relative to the school lands, if they meet with your favor.

"In addition to the provisions of the enabling act that no school lands be sold for less than $10 per acre, or leased for longer terms than five years, and that the fund arising therefrom in sales or leases, shall be an irreducible one, whose interest only shall be used to support public schools, (which latter provision will probably be incorporated into the educational article, likewise a plan for a board of investment and apportionment of funds), we would recommend that no more than one third of these lands be allowed to be sold in five years; not more than two-thirds in ten years, and that the time for selling the last one-third be decided after ten years by the legislature, and that such lands as are not sold be subject to lease; that all lands sold or leased shall be sold or leased at duly advertised public auction, in quantities not exceeding one section to any one person or company, provided that the most valuable lands be sold first; and provided further that any school lands situated within a radius of five miles from the center of any town or city of 5000 inhabitants or over, be subject to the following especial regulations in addition to those already mentioned, viz: That they shall be subject to especial appraisal and where the land is available for town or city lots, that it shall be platted into blocks and lots, and sold in quantities not exceeding one block to any one purchaser or company; and where it is not available for town or city lots within said radius it shall be sold in quantities not to exceed one-quarter section to any one purchaser or company.

THE TERMS.

"The terms of all of said sales to be one-fourth cash, each of the remaining three-fourths to be paid at intervals of two years, with interest on deferred payments at not less than 8 per cent, payable annually in advance. All sales to be conducted through a commissioner of school and public lands, who, with the state auditor, county surveyor and county superintendent of schools of each county, shall constitute boards for the appraisal and grading of lands, said boards of appraisal to have the right to consider the value of timber lands, both with reference to the land and the timber thereon, and decide whether the lands or the timber be sold separate or together.

"The proceeds of all said sales to be invested in school lands, municipal bonds, county bonds, state bonds, or first farm mortgages, at not less than 6 per cent. In case of investment in farm mortgages the three county commissioners aforementioned to be boards of appraisal for their own county to appraise the value of the farm land sought to be mortgaged, not more than one-half of the appraised value of the farm to be loaned, and not more than $4000 to be loaned to any one person or association in said county, the

TAB 18

PUBLIC SCHOOLS AND THE CONVENTION.

NO. 2.

In formulating a school system our constitutional convention should carefully consider every scheme laid before them in order to select the best. Prussia's school system is probably the most perfect in the world, and because it was so Prussia was enabled to lift herself from the deplorable condition which she occupied at the close of the Napoleonic wars to be the arbiter of European empires.

Austria has copied the Prussian system with magnificent results. Victoria, the smallest of the colonies, had a population of 5000 forty years ago, while today she boasts the possession of 1,000,000 people, as skilled, enterprising and cultured as any in the world. Melbourne, its capital, has a population of 500,000, and in it is established a university containing schools of art, medicine and engineering which outstrip those of mediæval origin. Her primary schools are absolutely controlled by a state bureau. There is perfect uniformity in charts, manuals and method, and highly competent inspectors secure the adoption of every new improvement in the matter and manner of teaching. Pupils of talent and industry are provided with free places in the higher schools and universities.

Americans have a wholesome objection to the establishment of bureaucracies in any shape or form, and they

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Americans have a wholesome objection to the establishment of bureaucracies in any shape or form, and they dread the dangers of centralizing their schools under a uniform state authority. But better to have our whole school system operated by a state commission, with its apparent dangers, than by local bodies if the bureaucratic system gives us schools vastly superior to those operated by boards of school districts. What guarantee has the state that a ring will not get control of local school boards and will run them not in the interest of education, but of boodlers? Are not such things done elsewhere? A regular state system, radiating from the capital, and building schools and supplying teachers when and where needed would be of vast benefit to the sparsely settled districts, and more thinly populated districts. And moreover it would produce a uniform and suitable teaching in elementary schools. Are the elementary schools of other states all that they should be? Are not the schools of many states graduating more to form a leisured class than a trading, mechanical and business people? In how many of them precious time that should be given to instruction in elementary chemistry, botany, physiology and physics is devoted to acquiring a smattering of dead and living languages that are of no earthly use to 90 per cent of our population afterwards.

We are well aware of the superiority of the classics, ancient and modern, for mental discipline and real culture. But we live in an eminently practical age, and if we are to hold our own our schools must be eminently practical too. Our primary schools must not be shaped to give America poets, artists and dreamers; they must be shaped to fit the children

We are well aware of the superiority of the classics, ancient and modern, for mental discipline and real culture. But we live in an eminently practical age, and if we are to hold our own our schools must be eminently practical too. Our primary schools must not be shaped to give America poets, artists and dreamers; they must be shaped to fit the children of the people to be mechanics, horticulturists, farmers, miners and business operators. We are going to have one of the mining countries of the world, and it is absolutely essential that our rising generation should be instructed in inorganic chemistry and physics to understand the use and value of the ores and metals with which our mountains are literally stored. Above all things, then, guard the schools from falling under the direction of fossils who in educational matters are guided by the exploded methods of a generation ago. We want our brightest intellects, men with a general knowledge of the practical workings of the school systems of the world to give aid and advice in forming the best of systems for Washington.

Louis Lerare.

TAB 19

THE CONVENTION AND EDUCATION.

NO. 1.

It cannot be too often impressed on the delegates to the convention that Washington's first hope is that she will be provided with the nucleus of an educational system which will make her public schools equal to any in America.

We should have general and compulsory education, and educational grants must be beyond the control of political wire-pullers.

While the appointment of teachers may remain in the hands of local school boards, the state should insist that no one is employed as teacher unless provided with a teacher's certificate. This certificate should be granted by the council of education only after a strict examination. This is of the very first importance, for while multitudes are ready to undertake the duties of a teacher, the art of teaching is one of the rare gifts. Learning is often made a physical and mental torture to children, on account of the teacher's incompetence, and it is the paramount duty of the state to see that no man or woman be intrusted with the functions of a public instructor without their fitness being satisfactorily guaranteed. Mere learning or university training is not enough. Knowledge is one thing

not enough. Knowledge is one thing and the power of imparting it another, but the state must see that the teacher possesses both. This is too important to be left to rural boards and the constitution should contain a clause insisting on the employment of certified teachers.

Moreover, the state will have in its school lands, a means of procuring a state fund for general education which can be made to do excellent service. Shortsighted policy would suggest that that fund should be made to assist local educational assessments. Let the various school districts provide for the building of their own schools and the payment of their teachers, but, let the state fund be utilized for state inspection of the schools and the payment to the teachers, in addition to their salaries, in proportion to the results achieved. This course will stimulate the teachers and procure a healthy emulation among pupils. Schools conducted without inspection never amount to much, while able inspectors not only secure the proper working of the schools but they are constantly improving them by pointing out the best system to be followed by the teacher in the imparting of knowledge.

It is, besides, highly important to have a uniform system throughout the state, and the council of Education should be directed to secure a uniform series of books for the public schools,

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cost inspection never amount to much, while able inspectors not only secure the proper working of the schools but they are constantly improving them by pointing out the best system to be followed by the teacher in the imparting of knowledge.

It is, besides, highly important to have a uniform system throughout the state, and the council of Education should be directed to secure a uniform series of books for the public schools, and the sale of these to the pupils at first cost.

State inspection, uniformity in the manuals, certified teachers, and payment for work done in addition to fixed salaries received from local boards, will be found to secure the best results in elementary schools. The council of Education should consist of two or three commissioners, and to them should be entrusted the duty of disbursing the school fund, or the portion allotted to elementary instruction. They should select three or four school inspectors, who would also form an examining board for the granting of teachers' licenses.

On the securing of competent school inspectors must depend the main success of any educational system. England pays her school inspectors as liberally as her inferior judges, and thus procures the services of such men as Matthew Arnold. By all means let us be economical in our state; but let us secure, at any cost, the establishment of elementary education on the best possible

Louis Lucaro

TAB 20

Inauguration of Elisha P. Ferry as First Governor of the State of Washington, Olympia, November 18, 1889

UNIVERSITY OF WASHINGTON PUBLICATIONS
IN
THE SOCIAL SCIENCES

Volume 12, pp. 1-298 August, 1940

MESSAGES OF THE GOVERNORS OF THE TERRITORY OF WASHINGTON TO THE LEGISLATIVE ASSEMBLY, 1854-1889

Edited by
CHARLES M. GATES

UNIVERSITY OF WASHINGTON PRESS
SEATTLE, WASHINGTON
1940

was done. The commission have made their award, and it has been approved by the Department familiar with such subjects. Justice demands the immediate liquidation of the debt to the full amount found due by the commission.

In conclusion, I would respectfully suggest that, as the present session of Congress will terminate on the 4th of March next, such matters as may require the action of our Delegate should receive the early attention of the Legislature.

HENRY M. MCGILL.

EXECUTIVE OFFICE, Olympia, December 6, 1860.

L. JAY S. TURNEY

L. Jay S. Turney of Illinois became secretary and acting governor of Washington Territory in the summer of 1861. A personal friend of President Lincoln, he was appointed to succeed Henry M. McGill. At the same time William H. Wallace was named governor but he resigned the office without qualifying, when nominated (and later elected) by the Republicans as territorial delegate to Congress. Turney therefore held the executive position until Governor Pickering arrived in June, 1862. Following his retirement from office, Turney continued in territorial politics and himself ran for the office of delegate to Congress in the election of 1863. He was, however, defeated by George E. Cole.*

*Snowden, *History of Washington*, IV, 140, 144, 173.

Acting Governor L. Jay S. Turney to the Ninth Annual Session of the Legislative Assembly, December 19, 1861.

Gentlemen of the Legislative Assembly of the Territory of Washington:

Custom requires the infliction of a "speech" on this occasion. A temporary and accidental occupancy of my present position, and my opportunities for becoming familiar with the geography, topography and history of our Territory having been limited, this requirement is somewhat onerous. I hope, therefore, you will not expect minute details in the thoughts now to be submitted.

From what I have heard, seen and read, however, I believe there is a bright, a glorious future, for the Territory of Washington. She lies between, and in the thoroughfare of populous and mighty nations; a large part of the world's commerce must ultimately pass over her bosom. She borders upon the majestic Pacific, and has within her limits an inland sea, sufficiently capacious to furnish safe anchorage for all the shipping now built, and it is filled with clams, crabs, oysters, salmon, and all the best varieties of fish. She is drained by the great Columbia and its beautiful tributaries. There is on these rivers the finest water-power on the globe, and enough to propel all the machinery in use. She has the thickest, largest and tallest timber that grows, and is undoubtedly the best lumbering country on earth; and yet she contains many beautiful and lovely prairies. Her coal, iron, copper, *silver* and GOLD fields, bid fair to equal, if not surpass, any yet discovered. Her fertile soil produces apples, pears, plums, and all the berries to perfection. Wheat, rye, oats, peas, beans and barley grow admirably. Her yield of hemp, flax and the grasses is unsurpassed; and in the production of cabbages, turnips, POTATOES and vegetables generally she is unequaled. Besides, her valleys are blessed with a mild pleasant climate—a climate neither too hot nor too cold, too dry nor much too wet!

Everything considered, Washington Territory certainly possesses greater natural advantages, more of the elements of wealth and true greatness, than are found in any other Territory or State on this continent. There is found nowhere else so many facilities for acquiring all the staples which supply the wants of life, and make a people prosperous, independent and happy. Here agriculture, commerce, manufacturing, MINING, lumbering, fishing, and all the various employments of industry may be profitably and successfully pursued. No other people are equally blessed with pure, clear cold water from snow-capped mountains, and at the same time breathe the pure air and enjoy the gentle breeze from the great ocean—consequently no people are in a greater degree blessed with the best of earthly blessings, good health; a health that invigorates, cheers and completes true greatness and produces perfect enjoyment. With a proper development of her illimitable natural advantages, who shall predict the future greatness, or assign limits to the brilliant destiny of the Territory of Washington?

Let it never be forgotten, however, that these great advantages and blessings bring with them corresponding duties and responsibilities—duties we *must* perform, responsibilities we *cannot* shirk.

School-houses, college edifices and temples in which to worship Almighty God, must be erected and sustained, public highways opened and kept in repair; bridges built and kept up; and public morals established and maintained; for no people can be truly prosperous and happy who do not duly appreciate and properly guard public and private morals. With a view to the proper and permanent establishment of morality, I commend to your favorable consideration the common school—the poor, though intellectual and honest boy's college. Legislators who would establish the liberties and happiness of the people, must not neglect their education. Experience demonstrates the perfect success of the common school system—that the masses can be educated, and that it is cheaper to educate the people than to punish the vices and crimes incident to ignorance. History shows that those communities having the largest number of well sustained schools, colleges and churches, need fewest jails and gibbets; therefore, I earnestly recommend the enactment of liberal laws on the subject of common schools—laws which will put them on a permanent basis, and thus secure to all our children a liberal education.

In warmly urging you to take under your fostering care our free schools, I would by no means have you forget or neglect the great interests involved in our present and future seminaries and colleges. Our munificent donations of lands for educational purposes, should be carefully watched and guarded, and no part of them suffered to be squandered under any pretext. In all cases, those intrusted with the selection or sale of these lands, or with the management or disbursement of funds arising from their sale, should be held to a strict and scrutinizing accountability.

In my judgment, you should consider well what powers and privileges are conferred over these lands by existing laws of Congress, and should not transcend them yourselves nor suffer others to do so. I cannot advise a ratification of illegal acts in relation to them. Their safety depends upon a rigid and faithful observance of the law *as it is*. A want of such observance may, and I fear will lose us a part, if not the whole of these lands, and wreck all our hopes based upon them. All wrong doers who would squander any part of these lands, should be frowned down by an enlightened and patriotic public sentiment.

A conviction of duty compels me to say in this connection, I regard the acts of the last Legislative Assembly in relation to the UNIVERSITY LANDS, as illegal and void; and the action of the Commissioners hasty and unwarranted. It is for you to determine, after a careful examination of the law and the report of

TAB 21

Index to the

Laws, Memorials and Resolutions

Passed by the
Washington Territorial Legislature
1853 - 1887

Office of the Secretary of State
Ralph Munro, Secretary of State

Division of Archives & Records Management
Sid McAlpin, State Archivist

Compiled by:

Sid McAlpin
Mary Oletzke
Jan McKenzie
Kathleen Waugh
David Hastings

Olympia, Washington
March, 1993

Introduction

On March 2, 1853 Congress, passed the Organic Act, establishing the Territory of Washington. This vast new territory included all of the land west of the Rocky Mountains, north of the Columbia River, and south of the British possessions. President Millard Fillmore named Isaac I. Stevens the first governor of the territory.

The Organic Act dictated the kind of government Washington Territory would have. Republican in form, it was to have an executive branch, a judicial branch and a legislative branch. The legislative branch consisted of two houses, a legislative assembly with eighteen members and a legislative council of nine members. The legislature could pass general and local laws, but all of its laws were subject to the approval of the U. S. Congress.

The Organic Act required that at their first assembly, the members of the legislative council (equivalent to the senate) divide themselves into three classes. The seats of the members of the first class would be open for re-election after the first year, those of the second class would be vacant after the second year, and those of the third class would be vacated at the expiration of the third year, so that one-third of the council seats would be chosen each year. The Act stated that the legislative assembly, or house of representatives, would initially consist of eighteen members, elected for one-year terms. The number could be increased in proportion to the population as long as the total membership of the council and the assembly combined did not exceed thirty.

The Organic Act provided that prior to the first election of the territorial legislature, a census would be ordered by the governor so that representation in the legislature could be properly apportioned. The task of taking the census was assigned to U. S. Marshal J. Patton Anderson, who preceded Stevens and the other new territorial officials to Washington Territory. The results of the census showed that there were 3,965 citizens in the territory (excluding Indians), of whom 1,682 were qualified to vote.

With the results of Marshal Anderson's census, Governor Stevens apportioned the territory and on November 28, 1853, issued a proclamation calling for the election of a legislature and other territorial officials. The election took place on January 30, 1854. The Legislature assembled in Olympia on February 27, 1854, for its first meeting, which took place in a plain, two-story wooden building fronting the bay in Olympia. The first floor was occupied by the Parker, Coulter & Co. general store. The legislative

chambers were on the second floor, which could only be reached by an outside wooden stairway.

The average age of the members was only twenty-eight years. They included ten farmers, seven lawyers, four mechanics, two merchants, two lumbermen, one civil engineer, and one surveyor. The members of the first legislative council were George N. McConaha representing King and Pierce Counties, Daniel Bradford of Clarke County, W. H. Tappan from Lewis County, Seth Catlin from Monticello, Henry Miles from Lewis County, D. R. Bigelow and B. F. Yantis representing Thurston County, Lafayette Balch of Steilacoom, and William P. Sayward. Elwood Evans served as chief clerk.

The members of the first legislative assembly were Francis Chenoweth, Benjamin F. Kendall, Arthur A. Denney, Calvin H. Hale, David Shelton, Ira Ward, L. D. Durgin, Samuel D. Howe, J. A. Bolon, John D. Biles, Henry R. Crosby, A. Lee Lewis, L. F. Thompson, Henry C. Mosely, John M. Chapman, Daniel F. Brownfield, H. D. Huntington, John R. Jackson, and Henry Feister (who died of apoplexy the day after his swearing-in).

Governor Stevens delivered his first address to the legislature on February 28. He asked the members of the legislature to lay the foundations of a body of law which would help ensure a prosperous future for the territory. Stevens stressed the need for roads and schools, and he advised memorializing Congress for help in establishing treaties with the Indians so that the land could be opened for white settlement.

Nearly all of Stevens' suggestions were acted upon by the legislature. To draft a code of laws, the legislature appointed a commission consisting of Chief Justice Edward Lander, Justice Victor Monroe, and former Oregon Justice William Strong. The commission closely followed the code of New York, with additions and changes derived from the codes of Indiana and Ohio, the states from which two of the commissioners had come.

The Organic Act provided that the first session of the legislature should not last longer than one hundred days. At the end of sixty-four days the first legislature had completed its work and its members were ready to return home. In this short time they had formulated and adopted a civil code, a criminal code, a probate law, a general election law, and nearly all other legislation necessary for the conduct of government. They also created eight new counties: Cowlitz, Wahkiakum, Clallam, Skamania, Whatcom, Sawamish, Chehalis, and Walla Walla. Several acts to locate roads in western Washington were also passed.

Some important memorials were also passed at this session, asking Congress for new ports of entry, a marine hospital, lighthouses, and recognition of the land ownership rights of George Bush, the first black to settle in the territory.

The first session of the legislature was considered a success, although two important measures, women's suffrage

and prohibition, failed to pass. The members made their way home by canoe and horseback, generally feeling that the job of establishing a government for the territory was well begun.

The second session of the legislature convened on December 4, 1854, and remained in session until February 1, 1855. During this session, the legislature passed a militia law, amended the road, school and fence laws and changed the time of the general election from June to July. The territorial penitentiary was voted to Clarke County, the capitol to Olympia, and the university to Seattle with a branch campus at Boisfort in Lewis County. An act prohibiting the sale and manufacture of "ardent spirits" was also passed but failed when presented to the people for approval.

The third session of the legislature met during the winter of 1855-56, in the midst of the Indian War. This legislature was preoccupied with the conduct of the war, and, to a lesser degree, with changes in the practices of the courts mandated by Congress. The members spent a great deal of time debating Governor Stevens' wartime declaration of martial law in Pierce County and compared their views on how to prosecute the war. One view was in support of General Wool, who simply closed eastern Washington to white settlers, thereby eliminating the friction between whites and Indians. The other view was represented by Governor Stevens and his Washington Territorial Volunteers, who saw defeating the Indians and forcing them onto reservations as the way to end the hostilities. In the end, two political parties came into being: the Stevens Party and the Anti-Stevens Party.

Both parties had successes. The Anti-Stevens Party managed to win a vote of censure of Stevens' martial law actions, but the next year Stevens proved his popularity by winning the office of delegate to Congress. General Wool was recalled by the Army, but his policy of closing eastern Washington was retained.

Washington remained a territory for thirty-six years. During that time the population grew from the initial 4,000 citizens to about 250,000. Cities took the place of frontier settlements, and the "Wild West" became civilized. The Territorial Legislature kept pace with the changes, amending old laws and passing new ones to meet the needs of the growing population and changing circumstances.

In total, the Territorial Legislature created twenty-six new counties and reapportioned the territory twelve times. In 1866 the sessions of the legislature were changed from annual to biennial, and in 1879 membership in the Legislative Council was raised to twelve members, while the number in the Legislative Assembly was raised to twenty-four.

By the early 1870's it was widely held that Washington was ready to become a state. The population level was sufficient and the legislature had created the necessary

legal infrastructure. Numerous memorials were sent to Congress requesting admission to the Union, but these were repeatedly denied because of party politics in Washington, D.C.

Most of the early legislators were men who were not very familiar with legal forms or parliamentary methods. They were plain and practical men, who had a certain vision of what they wanted Washington to be and they relentlessly worked toward that goal. Their work compares favorably with that of other states with more polished politicians. There were never any charges that they were improperly motivated. No member was ever charged with corruption, and the effectiveness of lobbyists was minimal. To be sure, frivolous laws were passed, including the concept of "legislative divorce" which was later condemned, but when Washington became a state, the laws of the territory were considered to be so valuable that they were adopted in their entirety and formed the basis for the laws of Washington State.

Although many of the territorial laws have been superseded by newer state laws, some still remain on the books. These relics from the days of Washington Territory were so well drafted that they still reflect the values of the citizens of Washington.

TAB 22

THE JOURNAL OF THE WASHINGTON STATE CONSTITUTIONAL CONVENTION 1889

with Analytical Index

by

Quentin Shipley Smith

Edited by
Beverly Paulik Rosenow

Analytical Index, Articles IX-XI (pp. 685-732)
lib.law.washington.edu/waconst/

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Buffalo, New York
1999

ARTICLE IX EDUCATION

The Convention was practically unanimous in drawing up an education article which protected the common school fund and set up a democratic, nonsectarian system of public education. In the early days of the Convention, the **Tacoma Daily Ledger** ran a series of four editorials featuring an educational system for the new state.[1] It is not known how effective these ideas were, but it is certain that the delegates were influenced in their work by a list of provisions for the governing of schools which was prepared by the territorial board of education and placed in the hands of the Committee on Education.[2]

Stiles later praised the school system which had been thus provided. He explained that the Convention was familiar with the disappointing history of school funds in many other states, and wanted to provide an irreducible fund for its common schools.[3]

The Committee for Education and Educational Institutions was appointed July 9. (p. 19)

Members: Blalock, chairman; Lindsley, Lillis, Dickey, Eshelman, Dunbar, and Allen.

Section 1

Present Language of the Constitution:

> **PREAMBLE. It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.**

Original language same as present.[4]

Text as given in report of committee, August 7:

Same as final. (p. 276)

1. Tacoma Daily Ledger, July 1, 3, 4, 6, 1889.
2. Spokane Falls Review, July 17, 1889.
3. Theodore L. Stiles, "The Constitution of the State and Its Effects upon Public Interests," Washington Historical Quarterly, IV (October, 1913), 284.
4. Education of Children: Original.

Section 2

Present Language of the Constitution:

> **PUBLIC SCHOOL SYSTEM. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.**

Original language same as present.[5]

Text as given in report of committee, August 7:

> Same as final except that the last sentence read, "But the entire revenue derived from the state school fund, and the state school tax shall be exclusively applied to the support of the common schools." (p. 276)

Final action by Convention, August 10:

> **Motion:** Turner moved to strike out the last sentence.
>
> **Action:** Motion lost. (p. 328)
>
> **Motion:** Cosgrove moved to have a school session of not less than six months.
>
> **Action:** Motion lost. (p. 328)
>
> **Motion:** Griffitts moved to change "common" to "public" in the last line.
>
> **Action:** Motion lost. (p. 328)
>
> **Motion:** Turner moved to amend the last sentence to its final form.
>
> **Action:** Motion carried. (p. 328)

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5. **Uniform System:** Ore., Const. (1857), Art. 8, sec. 3. [Similar. Many states have a provision similar to this.] **Includes What; Support of:** Cal., Const. (1879), Art. 9, sec. 6. [Very similar.]

Section 3

Present Language of the Constitution:

> **FUNDS FOR SUPPORT. The principal of the common school fund shall remain permanent and irreducible. The said fund shall be derived from the following named sources, to wit: Appropriations and donations by the state to this fund; donations and bequests by individuals to the state or public for common schools; the proceeds of lands and other property which revert to the state by escheat and forfeiture; the proceeds of all property granted to the state when the purpose of the grant is not specified, or is uncertain; funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law; the proceeds of the sale of timber, stone, minerals, or other property from school and state lands, other than those granted for specific purposes; all moneys received from persons appropriating timber, stone, minerals or other property from school and state lands other than those granted for specific purposes, and all moneys other than rental recovered from persons trespassing on said lands; five per centum of the proceeds of the sale of public lands lying within the state, which shall be sold by the United States subsequent to the admission of the state into the Union as approved by section 13 of the act of congress enabling the admission of the state into the Union; the principal of all funds arising from the sale of lands and other property which have been, and hereafter may be granted to the state for the support of common schools. The legislature may make further provisions for enlarging said fund. The interest accruing on said fund together with all rentals and other revenues derived therefrom and from lands and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools.**

Original language same as final.[6]

Proposition submitted to Convention by Turner, July 12:

> That the school fund be invested under rules prescribed by law, the interest only be used for schools, any deficit be supplied by taxation, and the funds augmented by fines, for-

6. **Common School Fund:** Ore., Const. (1857), Art. 8, sec. 2; Hill, Prop. Wash. Const., Art. 8, sec. 3; Wash., Const. (1878), Art. 11, sec. 4. [Similar.]

feitures, unclaimed witness and jury fees, gifts and grants of property to the state not otherwise directed. (p. 86)

Text as given in report of committee, August 7:

Same as final except that it had "educational institutions" instead of "common schools" after "bequests by individuals to the state or public for" and omitted "other than those granted for specific purposes" after "persons appropriating timber, stone, minerals, or other property from school and state lands." (p. 277)

Final action by Convention, August 10:

Motion: Godman moved to strike out "and state" from every mention of "school and state lands." This would have left school lands to furnish the revenue from lands.

Action: Motion lost. (p. 328)

Motion: Turner moved to strike "educational institutions" and insert "common schools" in line four.

Action: Motion carried.

Motion: Bowen moved to add "other than those granted for specific purposes" after "state lands."

Action: Motion carried. (p. 328)

Motion: Cosgrove moved to add that this would not affect lands the state owned by its sovereignty.

Action: Motion lost. (pp. 328-9)

Motion: Turner moved to amend the clause to read, "The interest accruing on said fund together with all rentals and other property devoted to the common school fund shall be exclusively applied to the current use of the common schools."

Action: Motion carried. (p. 329)

Section 4

Present Language of the Constitution:

SECTARIAN CONTROL OR INFLUENCE PROHIBITED. All schools maintained or supported wholly or in part

TAB 23

The Washington Historical Quarterly

VOL. IV, NO. 4 OCTOBER, 1913

ISSUED QUARTERLY

Contents

THE WASHINGTON UNIVERSITY
STATE HISTORICAL SOCIETY
UNIVERSITY STATION
SEATTLE, WASHINGTON

Entered at the Postoffice at Seattle as second-class mail matter.

THE CONSTITUTION OF THE STATE AND ITS EFFECTS UPON PUBLIC INTERESTS*

The feature of the constitution of Washington which was most frequently criticised at the time of its adoption was its length, but time and experience has shown that its principal fault is that it is really not long enough.

The American people have become so used to living under written constitutions that a sort of constitutional common law has come to exist, which enforces an unconscious uniformity in the substantial provisions of all them.

Each state is under obligation to its people to afford them republican form of government, and our ideas of such an institution are so fixed by usage and judicial interpretation that the constitution of each new state, in all the essentials, is but a copy of some older one.

Certain questions, as, for instance, the right of the people to take or injure property of individuals only upon making compensation therefor, the imperative necessity of guaranteeing the absolute secrecy of the ballot, the evils attending the public contributions to the building of railroads, and others, became so well settled in the public mind many years ago, that the people in remodeling old constitutions and in enacting new ones, insisted upon withdrawing them from possible legislative disturbances.

There is no reason why firmly settled principles or policies of government should not be expressed in written and unalterable law, even if the expression of them requires more words than were used in an older constitution. The Constitution of the United States and the constitutions of many of the older states were framed by men who had the benefit of sufficient experience or sufficient foresight to anticipate what the demands of the future would be. Yet it required twelve amendments to the federal constitution to put that instrument into satisfactory operation.

The constitution of Washington, therefore, contained little that was new, or that was not, in substance, expressed in some preceding document of like character or, at any rate, in well considered and long enacted legislation. The difficulty which most greatly embarrassed the convention, as it turns out, was in expressing definitely and certainly the meaning of many of the important acts framed and proposed by it. I doubt whether a majority of the people of the state would think it worth while

*This article appears as Appendix 2 of Mr. Knapp's thesis published in this issue. Mr. Stiles was a member of the Constitutional Convention and was later elected a Justice of the first Supreme Court of the State.

to change the plan and scope of their constitution, though they might desire to state more clearly some of its provisions, and thereby cause the course of interpertation to be changed or reversed. In its operation upon the executive, and especially upon the legislative branches of the state government, the constitution is an instrument of limitation, and both of these departments have been pressed hard upon, and as many people believe, over, the lines laid down by their fundamental law, without being checked by the judicial department, which is always slow to exercise control over a coordinate branch of government, unless compelled to do so by unmistakably binding statute. A few more words or some different words, had they been employed by the constitution, would, in every instance which now occurs to me, have served to express a meaning which would have been more satisfactory to the people, and which, I am convinced, was the understanding and intention of that body.

But the convention did its best. It worked honestly and earnestly to accomplish, in the short time allotted to it, the highest good to the incoming state. There were no cranks, and very few politicians in it, and I verily believe that in no body of like character has politics been more completely subservient to the public welfare. Its weakness was that it had to be chosen from the common people of the territory, who were not numerous, and who had not had the training in schools of the lucid and comprehensive statement. Its members had ideas enough, and they knew well what they wanted, but when it came to setting it down in precise and unmistakable language, they lacked the necessary experience. More things were taken for granted or left to implication than should have been, as the sequel proves.

One instance of oversight of this kind may be mentioned for illustration. Section 22 of the second article declares that no bill shall become a law unless on its final passage the vote is taken by yeas and nays and a majority of the members elected to each house be recorded as voting in its favor. Yet section 22 is practically a dead letter, and not a session of the legislature has been had where numerous bills did not go through and become law, without even a substantial compliance with this requirement, and the practice will continue simply because the constitution provides no way by which the question of the actual passage of a bill may be tested, the supreme court holding that there can be no inquiry into the history of a law beyond the enrolled bill.

Section 16 of the first article on the subject of compensation of property taken for the use of the public was a very clear proposition, until a member who thought that municipal corporations should be allowed to take possession of lands condemned for streets as soon as the damages

had been ascertained without actual payment into the court caused the words "other than municipal" to be inserted in it by amendment. The convention was satisfied to adopt the suggestion, but the only result of the amendment was to bring on a conflict between the property owners and the cities, in which the latter were worsted, because the words above quoted, in the place where they were found, did not have force enough to overcome the flat declaration contained elsewhere in the same section, that no private property should be taken until compensation had first been made or paid into court for the owner. The ablest man in the convention proposed the amendment, and no one was more surprised than himself at the outcome of it. A few words more or perhaps the same words set in a different place, might have made the exception intended clear, instead of merely confusing the whole section.

Among the meritorious provisions of our constitution which had any degree of novelty at all, I pronounce the judicial system first. Not many of the states have constitutional courts, and still fewer of them have undertaken to define the jurisdiction of their courts by the higher law. We have an appellate court, with a slight measure of original jurisdiction, whose powers are broad and universal for the correction of all errors of the inferior courts, and yet whose interference stops at the line where cases are small and concern mere questions of money. No legislative whim can ditsurb or destroy the steady course of judicial decision. The judges are numerous enough to secure the deliberate investigation, and the length of term and rotation of office are well adapted to secure the dignified but not servile response to the popular will.

Every county has its superior court with almost universal original jurisdiction and with judges enough to keep abreast of the business. The hard times and great unexpected falling off of all commercial enterprises caused some of us to say that we had more courts than we needed, but it is noticeable that no county has yet voluntarily offered to surrender the advantage it has in having a court always open at the service of its citizens. There is less complaint in Washington than in any other state in the Union growing out of crowded calendars and delays in the administration of justice. Such complaints as justly exist here are due to the forms of practice prescribed by the statutes, and not to the courts or the system under which they exist.

In the matter of the elective franchise Washington took an advanced position. None but citizens of the United States can vote; the ballot must be absolutely secret, and registration is compulsory, in all but purely rural communities, where everybody is known. The consequence of these

provisions has been that election scandals are almost unknown here, and there is nowhere a more independent body of voters.

By prescribing limitations to the power of creating public indebtedness and restricting the objects for which indebtedness might be created the constitution has doubtless served a valuable purpose. Its framers certainly expected that it would be more literally construed, than it has been; but the peculiar exigencies of the times have caused the provisions on this subject to be more hardly pressed than any others. Unfortunately there was no definition of indebtedness in the constitution and the legislature has never supplied the deficiency. Reckless assessments in the earlier years deceived the people and encouraged them to extravagance; and when the borrowed money was spent there were presented two miserable alternatives of repudiation or stoppage of government unless the letter of the law could be made to give way in some measure to its supposable spirit.

No other state has placed the common school on so high a pedestal. One who carefully reads Article IX. might also wonder whether, after giving to the school fund all that is here required to be given, anything would be left for other purposes. But the convention was familiar with the history of school funds in the older states, and the attempt was made to avoid the possibility of repeating the tale of dissipation and utter loss. At the minimum rate at which school lands can be sold, the state will, sometime, have an irreducible fund for its common schools of more than $25,000,000, an endowment greater than that of any other educational system now existing.

In a few of its features, mostly original ones, the constitution has, in my judgment, not worked well. It was a good thing to do away with the old plan of granting special charters to cities and towns by special act of the legislature. Two hundred and eighty-six pages of the laws of 1896 were taken up with enactments of this kind, which, it was notorious, were passed without any consideration of the legislature; and, doubtless, by this time that record would have been distanced but for the prohibition contained in Article IX. But the concession which followed, that cities of 20,000 inhabitants and upwards might make their own charters, was a melancholy mistake. It has cost the cities capable of availing themselves of this privilege more than $50,000 to get themselves under the provision of their present charters and there is scarcely an important provision in any of them that does not require an opinion of the supreme court to determine whether it is not in conflict with the "general law" before it can be enforced. This is one of the few instances where special interests got control of the convention. The county members did

not care to oppose their city brethren, and the latter, spurred by their ambitious constituents at home, really thought that nothing the legislature ever would, or could do, would be large enough to meet the requirements of the growing metropolises. The committee report on this subject favored 75,000 as the minimum population, but the convention got hold of it and ran the figures down by successive amendments to 1,500, where a halt was called by killing the whole proposition. It would have been well if it had remained in that condition, but a compromise was effected, a reconsideration had, and the result is the article named.

Article XV. has been a failure and probably always will be. It was an attempt to legislate about a subject upon which the convention had little or no information, and one, the treatment of which, must necessarily depend upon the circumstances of each particular case. Harbors are built and maintained for the benefit of commerce, and the contour of the land and the depth of water where it is proposed to establish a harbor necessarily determine the best form for its construction. There may be some places on the face of the earth, or even within the state of Washington, where an arbitrary fixed line laid out on navigable waters, with a 600-foot reserved area behind it, will serve as a safe plan for a harbor, but there are not many such. Commerce has not yet felt the effects of this article, because it has not been put into operation beyond the wholesale selling out of tideflats, and because the surveys have been so made, in most instances, that vessels do not use the harbor areas at all.

The article on impeachments is inadequate, and every attempt to follow it has proved to be a farce. The legislature has not the time, in the course of its short sessions, to lay aside its other business and attend to the details of a trial; besides, partizanship is always too rife in such bodies to enable them to act with the judicial fairness which ought to characterize such a proceeding.

The constitution ought to have destroyed the warrant system as a means of paying public obligations. The public ought to pay money to its creditors whenever their demands are due and, if necessary, it ought to borrow the money outright from those who have it to lend, instead of putting off claimants with paper redeemable at no fixed time, and at extravagant rates of interest. This state need never have been paid more than four per cent for all the money required, and the counties and cities would have done nearly as well, if all had been on a cash basis. What sort of credit would a business man have who paid for his goods only in non-negotiable notes not due until he got the money? The cash system would have checked extravagance; it would have lowered the price of supplies, and it would have prevented the loss of hundreds of

thousands of dollars in broken banks, and, perhaps, saved the banks themselves from insolvency.

There have been some excellent provisions in the constitution from which the people have had no benefit, because they depend for operation upon action by the legislature, and that body has neglected to do its duty in the premises. Considering that by section 29 of the first article every direction contained in the constitution is mandatory unless expressly declared to be otherwise, it is at least surprising that in some instances no attempt has been made whatever to set these provisions at their legitimate work. The first of these provisions which occurs is that contained in section 30, Article II., where it was prescribed that the offense of corrupt solicitation of members of the legislature and other public officers should be defined by law and appropriately punished, and witnesses were denied the privilege of refusing to testify to matters incriminating themselves. Several cases have occurred where lack of legislation on this subject has been severely felt in cases arising within the legislature itself.

Section 18, Article XII., requires the passage of laws establishing a reasonable rate for the transportation of freight and passengers by all common carriers, and no honest effort has been made to give the public the relief provided for. All that has been done for the benefit of a single interest, and applies only to certain classes of freight.

I am sure the author of section 22, Article XII., never thought that many legislatures would come and go without the introduction of a single bill to carry out his prohibitions against monopolies and trusts; yet the section ends with these words, "The legislature shall pass laws for the enforcement of this section." Just what must be the form of the laws necessary in this instance is more than I know; but I believe we are suffering from the want of them. With almost everything in the way of raw materials at our hands, we manufacture almost nothing that can be shipped from the great trust neighborhoods, because our business men dare not undertake manufacturing for fear of being crushed by the foreign octopi. There should be at least an investigation to see what effect these combinations, unlawful everywhere, are having upon our prosperity, and, if it is true that they are preying on our very vitals, whatever may be done under the section mentioned should be done with the utmost vigor.

Through obvious neglect in not prescribing regulations supplementary to Article XIII., the legislature has allowed the provisions of that article to have no practical force, so far as the appointment of boards for the control of the public institutions of the state is concerned. The senate does not, in practice, concur in the appointment of any of these officials, but

the whole matter is left to the discretion of the governor, who appoints and removes them at his pleasure. From the system into which we have fallen it results that there is not an independent appointive officer in the state, whose continuation in office is certain even for a day.

Wherever our constitution is self-executing, it has been found in the main satisfactory, but these portions which require to be supplemented by statute have met with little intelligent interpretation and much neglect. It deserves to be given a full trial and when it arrives at that state I believe it will be found to be an efficient guiding instrument, unnecessary to be materially altered for years to come.

THEODORE L. STILES.

TAB 24

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HISTORY OF EARLY COMMON SCHOOL EDUCATION IN WASHINGTON

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England."[3] At another place we find the statement, "Knowing Mr. Atkinson to be familiar with the graded schools of Boston and vicinity, they requested him to start the graded school for them (at Oregon City)."[4] Dr. Atkinson himself wrote:

> "The men and women who were forced to leave England in order to secure and enjoy the rights which they deemed inalienable began to exercise those rights not only in the churches, but in their school districts. Those school districts were their smallest voting precincts, . . . The school district was a pure democracy, . . . a perfect self-government in its sphere of legislation, and the colony or state a larger one. . . . Within this district every child had equal rights to all its provisions."[5]

All this is interesting as presenting the background and viewpoint of the character who is largely responsible for the law of 1849, which had its influence on the later legislation of both Oregon and Washington.

The New England influence came into Oregon, then, by two distinct routes; indirectly, through the Iowa law; directly, through the well-crystallized ideas of the New Englander who was greatly responsible for the law. While the general trend of the population came from the Middle West, where the influence of the New England system had already been spread, still there seem to have been no educational leaders among them. Perhaps this will explain, however, why it was that the law had such unanimous support.

The New England ideas on the importance of free education; the extreme localization of control as reflected in the district system; the permanent school fund; the certification of teachers; a state tax to support education; the election of district trustees; religious freedom of teacher and pupil; all were incorporated in the Oregon law.

[3] *Ibid*, p. 29.
[4] *Ibid*., p. 139.
[5] *Ibid*., p. 752.

IX

THE DARK ERA

THE FORMATION OF WASHINGTON TERRITORY

In 1851 the movement started to separate Northern Oregon from the original territory. D. R. Bigelow, who enters so prominently in later educational history, made a Fourth of July oration at Olympia that launched the movement in all seriousness. A newspaper, *The Columbian*, was started on September 11, 1852, and immediately began the agitation for the new territory. As a result of this, a convention was called to meet at the house of H. D. Huntington at Monticello, near the mouth of the Cowlitz River, on October 25 of that year. A memorial was addressed to Congress praying that the territory of Columbia be set off as an independent political unit.[1]

The details of this important move are not relevant to this phase of history. Suffice it to say that with the aid of Oregon the Organic Law of March 2, 1853, was passed creating Washington Territory. This law, with some amendments, served as a constitution for Washington Territory until February 22, 1889, when what was known as the "Enabling Act" was approved, establishing the State of Washington.

The population of the Territory at the time of its formation was as follows:

Island County	195
Jefferson County	189
King County	170
Pierce County	513
Thurston County	996
Pacific County	152
Lewis County	616
Clarke County	1,134
Total	3,965[2]

[1] Meany, (Edmond S.), *History of the State of Washington*, p. 156.
[2] *Pioneer and Democrat*, Dec. 17, 1853.

LACK OF AUTHENTIC RECORDS

A few words of explanation seem pertinent at this point in order that the reader may grasp fully the difficulties felt by the historian in presenting the history of Education of the Second Period—from the inception of the Territory of Washington in 1853, to the foundation of the State in 1889.

I am inclined to call the time previous to 1873 the Dark Era; for it was not until that year that the administrative organization was efficient enough to give us much light on the condition of educational affairs in the Territory. In 1873 the first regular report of the Superintendent of Public Instruction, of that unbroken series which we now enjoy, was made. Before that time there was much confusion. The system, if indeed, it could be called a system, was without a central head; with two or three possible exceptions, it was also without proper county organization; and lastly, district matters were anything but ideal. No official records are to be found for these two decades of the Dark Era, with the exception of the report of the Superintendent of Public Instruction for the year 1862, of which more will be said.

Let us turn, then, to the counties. Here we are more fortunate, inasmuch as a few keen county superintendents published their reports. But for the most part, loss of the records, failure to collect data, failure of the clerks of the districts to furnish reports, all go to substantiate the fact of the confusion of the time.

Indeed, one need only turn to the later reports and documents for still greater evidence bearing on this point. Dr. Nelson Rounds, who was the newly appointed superintendent of Public Instruction, in an article written in 1872, stated that it was very difficult to get material from the counties, upon which to base a report. He said in part:

"I will only add the following extract from a letter lately received from an excellent superintendent: 'Your letter came to hand Saturday. I am glad to hear from you, and especially glad to see a little enthusiasm in the cause of education. This Territory, which as you intimate, is the germ of a great state, I fear is sadly in need of some enthusiasm and a great deal of energy in the cause. To convince you of this fact, I have to inform you that the clerks of the several districts of this county have barely sent me the number of children entitled to draw public money. You will therefore excuse me, if I am unable to furnish you such items of information as you desire. So far as I know, it has never been the custom in this country to require more, (than that one item). Should you think it advisable to issue an address to the clerks of the school districts in the Territory, it might have the effect to spur them to their duties.'"[3]

The cause of education would have been strengthened had it been centered around a head several years before it actually was. In 1861 a superintendent was provided by the statutes, but he was legislated out of office at the end of the year. Not for another decade was there enough interest shown on the part of the leaders to provide another law of like nature. It was Governor Edward S. Salomon, who in his message of October 2, 1871, brought the need of a superintendent before the legislature. He said:

"I have endeavored to obtain some statistics in regard to education, from the different county superintendents of common schools. Only a few have replied to my inquiries, and I am therefore unable to lay before you such a statement as I desired to make. I deem it, however, of the utmost importance that a suitable person should be appointed Superintendent of Public Instruction, whose duty it should be to bring uniformity into our public school system, and who should have the necessary powers vested in him to exercise a control over the county superintendents, compelling them to report, and thus enable him bi-annually to lay before the Legislature an intelligent statistical report, with such recommendations as his experience and observations would suggest.

"I have received a great number of letters from all parts of the Union, requesting information about this Territory, its soil, climate and resources, but the first and most important question invariably asked is: 'What are the facilities for educating my children?' These facilities are not what they ought to be, and I could only answer that the Legislature would undoubtedly give this question due consideration. It is true our taxes are heavy; but no citizen who can appreciate the value of a good education will object to pay for procuring it for his children. I hope this subject will receive careful attention."[4]

What greater evidence is there, of the chaotic condition in which the system found itself, than the fact that the governor of the Territory himself could not get reports from the various counties of the Territory? It was a Dark Era, indeed.

SLOW GROWTH IN DARK ERA

That there was a growth during the two decades, 1853 to 1873, there can be no doubt; yet the growth was not consistent with the expansion of the Territory in other lines of activity. It

[3] *Weekly Echo*, April 25, 1872.
[4] *House Journal*, Appendix, p. 105, 1871.

is true, the University of Washington had been established and was playing a role in educational matters; it is true some colleges and academies existed; it is true the common schools had been organized and were assuming the part legally assigned to them; nevertheless, there was that lack of co-ordination that crystallizes the public mind to a realization of the importance of education—to the power of it.

The causes of this slow growth are hard to determine. Perhaps they could be shown very briefly under three statements: first, there were two serious political matters before the Territory during that time, the Indian wars of 1855, and the great Civil War of the 'sixties; second, the experiment of appointing a superintendent in 1861 had resulted unsatisfactorily for education, in that the office was short-lived, and there was a reaction against centralized control; third, there was a type of population that held education somewhat too lightly; and fourth, private schools thrived, which filled the need of schools to a great extent.

Of the first of these little need be said. That affairs in the Territory revolved around the serious problems incident to war, is shown by the extended space given those matters in the newspapers of the era; that the brief term of Superintendent Lippincott was not satisfactory to the people, will later be shown; that there were people who had no particular favor toward education, is a matter that should be given some thought; that private schools thrived, will be clearly shown as the facts are correlated.

Calling attention at this place, then, to the third point shown above, we have the opinion of the Hon. D. R. Bigelow, an attorney, who served in the Territorial Legislature for some time, and who served as Superintendent of Thurston County several years. In his annual report of December 1, 1870, he wrote:

"Some surprise has been expressed by new settlers, that our educational interests are so backward, after twenty years' growth. It is perhaps true that we have as yet made little more than a hopeful beginning; yet there are many men in the county who deserves great praise for the efforts they have made to educate their children and to promote the cause of education. I know of one poor man, living in a remote settlement, with a large family, who, with the labor of his hands, has earned and paid to educate his children more than $1,600. And I know of others who have made noble efforts and great sacrifices, laboring under apparently almost insurmountable obstacles. . . . And while it is undoubtedly true that our county and Territory compares unfavorably with other territories of the same age, yet it is not just to bestow indiscriminate censure, but rather

to inquire the causes of our slow growth in educational interests. The growth in population of our Territory has kept pace almost identically with the growth of the population of New England the first twenty years of its history.

"The commencement of our Territorial history dates back just about twenty years. We have now about 24,000 inhabitants. At the end of the first twenty years of New England's history, it had just about the same population. In most things we have had greatly the advantage. We have had a better soil and a better climate; and I suppose Uncle Sam has spent more money in this Territory, than all the inhabitants that lived in New England for the first twenty years ever saw while there. Yet, in all the elements of empire, New England was far ahead of us now, and in none more conspicuously than in education. Her chief advantage over us, was in the indomitable industry, and in the moral heroism of its citizens. They came to make homes and surrounded them with all that make homes desirable; whereas in our case, a majority of our citizens, who have been best able, both in talents and money, to build up the country's moral and educative interests, have been adventurers; their citizenship in the Territory depending on some contingency; and consequently they have not felt that interest in the education of the country, either of the present or future generations as to induce them to make any adequate effort to accomplish it. And some of our old citizens of fifteen and more years' residence in the Territory, who have grown too rich to be public spirited, have retired apparently within an impervious shell, oblivious alike to their early blessings, and of their duty to transmit them to future generations. But while our hopes are bright for the Territory's future in other things, let us also hope that the first generation of native born Washingtonians may not all pass their majority until all the educational privileges enjoyed by their fathers and mothers shall be provided for them also."[9]

To the mind of Mr. Bigelow, the Territory had made too slow a growth in education, and its chief cause was to be found in the fact that a majority of its citizens were adventurers, and were not primarily interested in building up permanent institutions.

There is much more evidence to support the viewpoint that the two decades were truly a Dark Era. In a report to the Hon. John Eaton, Jr., Commissioner of Education of the United States, made by James Scott, Secretary of Washington Territory, in 1870, we learn that the statistics of the Territory were so meager in relation to education, that he could scarcely do more than approximate the information which the Commissioner of Education desired.

"We have no territorial commissioner or bureau as a head of the school system, through which the census of our school population and other

[9] *Weekly Echo*, Dec. 8, 1870.

statistical information in relation to our schools can be gathered," he reported. "The only school officers provided for by our laws are County Superintendents and district school directors. It is hoped by the friends of education in the Territory that the evil will soon be remedied by the creation of a central bureau having a supervision over all the schools, and to which the county superintendents will be required to report. The number of school population in our Territory, as well as the number of schools, teachers, and children attending school, must be conjectured to some extent.

"The number of school population in Washington Territory, of course, is not as great compared with the whole population as in the states, but larger than in any of the other Territories, for the reason that it is the senior of them all, and the pioneers have had ample time to prepare homes and bring out their families. I think that the number of school population can safely be put down at one-fourth the whole population, or 7,500."[6]

The condition of the schools at the end of these two decades is shown in the table below, the first statistical report we have, that of Superintendent Rounds.

TABLE I. 1872—STATISTICS[7]

Counties	School Houses	Districts	School Taught	No. Attending	Persons of School Age	Amount Paid Teachers
Chehalis	5	9	3	90	150	$ 500.00
Clallam	1	4	3	57	114	509.00
Clarke	26	31	31	641	1,350	2,226.91
Cowlitz	5	8	6	132	261	800.00
Island	6	6	2	80	150	1,048.00
Jefferson	3	4	3	134	239	2,788.82
King	8	12	8	213	556	1,952.40
Kitsap	5	5	5	92	180	2,690.90
Klickitat	2	4	3	66	114	500.00
Lewis	7	13	10	166	414	840.00
Mason	1	4	1	16	47	336.71
Pacific	3	11	4	115	239	1,020.00
Pierce	5	12	9	157	320	1,300.00
Snohomish	2	2	2	40	75	240.00
Skamania	2	3	2	28	45	225.00
Stevens	0	4	3	48	90	540.00
Thurston	17	22	21	500	970	3,300.00
Waldalcum	1	1	1	13	25	60.00
Walla Walla	37	48	33	1,035	2,479	7,250.00
Whatcom	3	5	2	90	183	369.90
Whitman	.	.	.	..	...	.....
Yakima	5	14	5	115	229	700.00
App. Total	144	222	157	3828	8290	$29,318.64

[6] *Report of the Commissioner of Education*, 1870, p. 333.
[7] From *Puget Sound Courier*, Jan. 10, 1873, Superintendent Rounds' Report.

Certainly, if there is any single period in the life of a state or nation which is of greatest importance, it is the critical period immediately following its birth. As the infant industry struggles through the first few years of its life with the protection afforded it by a benign government, just so struggled our Territory through the first two decades of its existence—an era of construction and organization, possibly the most important single period of its history.

At the beginning of this Dark Era, as we have seen, there were very few schools id existence, and these were mostly clustered around Olympia; at the end, there were over eight thousand children of school age, two hundred twenty-two school districts scattered throughout twenty-two counties, and more than twenty-nine thousand dollars were being paid out for teachers in a single year. In view of these facts, it is safe to say that the formative Era was undoubtedly the most important single period in the whole history of education in the State of Washington. It is the one about which least is known. It was the time of heroism, of struggle—the Era in which was laid the foundation for one of the foremost school systems in the United States.

XIII

THE TERRITORIAL SUPERINTENDENTS

WEAKNESS OF THE LAW

One of the greatest weaknesses of the Law of 1854 was that it did not provide for a centralized control of the educational system. This weakness has been emphasized elsewhere but it should be noted again here. Section 7 provided:

"It shall be the duty of the superintendent (county) to receive the district reports hereinafter provided for, and keep them on file in his office; and he shall at least ten days before the first Friday in November of each year, make out from the district reports, a statement of the number of scholars in the county—the number of school libraries—the number of school houses—the number of districts—in how many districts school has been kept in the past year—what school books are principally used—what proportion of all the scholars in the county have attended school for the past year—the amount of money paid to teachers. This statement, together with such other information and suggestions as he may deem important to the cause of education, he shall file in his office, and may, if convenient, publish it in some newspaper of this Territory."

Very few of the reports were published, and from the difficulty that has been encountered in getting information from the counties, one may assume that if the reports were filed as required by law, the files must have been destroyed, as few of the reports seem to be in existence.

The least function of a territorial superintendent was to collect these county reports and get together the statistics. But this was not done for some twenty years. Again, who was there to interpret the law? Superintendent William H. Wood, of Pierce County, propounds some important problems in his report of 1861 which illustrate clearly the need of a central interpretative authority:

"I would submit for your consideration and opinion, whether school funds paid to district clerks out of the county treasury, in the superintendents' warrant, can be legitimately expended for any other purpose than paying teachers' salaries.

"In one of the reports I find the following items:

Paid E. H. Tucker, sheriff $17.10.
Paid Frank Clark for legal services $50.
Paid W. H. Wallace for rent $30

Paid E. Higgins, interest on school order, $17.55.
Paid E. Higgins, interest on school order, $20.
"Are these expenditures legal? I think not."

This illustration shows the lack of efficiency that may result in the absence of a central checking system. Who it was that brought this matter to the attention of Governor Henry C. McGill is not known. His seems to have been the first voice raised in the matter, and his logic was so convincing that, no doubt, the provision of the legislature in 1861 for a territorial superintendent was the direct result of his influence. He said:

"There is no subject in which our citizens feel so deep an interest as in the progress of education, and none which merits to a higher degree the attention of the Legislature. Our common school system, although devised with much care, is, I conceive susceptible of many improvements, and among the first important, I would suggest the passage of a law providing for the appointment by the Legislature of a Superintendent or Commissioner of Public instruction, to be charged with the general supervision of education throughout the Territory. The Superintendent, if such a law should prevail, should be a man well qualified in every particular for the position, and should be allowed such co-operation as will permit him to devote his entire time to the duties of the office. I am confident that I express the sentiment of our citizens, when I state that there is no object for which they could more cheerfully bear taxation than for the thorough education of their children.

"By the present law it is made the duty of the County Superintendent to visit the schools of his county annually, and to prepare a statement containing abstracts from the district reports, and such other information or suggestions as he may deem important to the cause of education. This statement he is required to file in his office, and if convenient to publish in some newspaper of the Territory. I am not aware that these statements are ever published. If not, of what practical use can they be to the cause of education?"

The Legislature passed the law requested by the governor, and an appointment was made.[1]

B. C. LIPPINCOTT (1860-61)

The honor of having served as the first superintendent of Washington Territory fell to the lot of B. C. Lippincott, a Methodist minister who was principal of the Puget Sound Wesleyan Institute. The special abilities of Mr. Lippincott have been mentioned in a previous chapter. Here it is only proper to weigh

[1] McGill, (Henry C.), Message to Legislative Assembly, *House Journal*, 6th Session, pp. 25-26.

impartially his work and give him the place in history which that work acclaims for him.

The statement has been made that his report was unsatisfactory. His report, however, seems to be not only as complete a report as it was possible for him to make, but it was constructive.

There are a few things to which it is proper to call attention at this point. He acknowledges first that his report was unsatisfactory because of the immaturity of the common school system and also because the law did not require the county superintendents to report to his office. It is shown in another instance that the governor of the Territory himself complained that he could not get reports from county superintendents. How could a newly-elected superintendent of schools be expected to accomplish what a governor could not demand nearly ten years later? Certainly his recommendations to the legislative assembly that county superintendents and chartered institutions be required to report to the office of the territorial superintendent is a constructive matter involving the highest wisdom. Again his proposal that the superintendent of public instruction be authorized to issue certificates which would be good in any county was a sign of advance. His recommendation about apportioning the county funds was a good one.

On the whole, then, his report was constructive. He gave what information he was able to get from the counties in the face of inadequate laws; he recommended text books. Nevertheless, there was one section of his report which was not popular. It was his stand against the university. He felt that the common schools should be looked after before the university, he even doubted the legality of the disposal of the lands; he stated that there was no need for the university. This seems to have been the fatal mistake that caused him to be legislated out of office. The very body that received his report voted to discontinue the office of superintendent of public instruction.

That there was a division on this question there is little doubt. One ardent admirer wrote:

"Rev. Mr. Lippincott, in his official report as superintendent of education, in the honest performance of his sworn duty, took exceptions and entered his earnest protest against this abomination, for which he and his office were erased from the statutes. I never could divine the wonderful amount of principle herein manifested, but I easily discovered that in this unkindest cut the cause of education received an irretrievable stab, even in the very house of its friends. The reverend gentleman need not mourn his treatment, as other good causes have met like offsets, so let our kind friend take hope that 'Truth crushed to earth shall rise again'."[1]

It seems quite plausible that the centralization of the common school system was delayed a decade because of this one section of his annual report.

DR. NELSON ROUNDS (1872-74)

The second superintendent of public instruction came into office with an especially difficult task on his hands. In the first place there was no precedent for him to follow. Only once in the history of education had there been an attempt to unify the educational system, and a decade had elapsed since that attempt had ended. The system was disorganized.

Dr. Rounds' report gave us the first statistical material ever compiled for the territory. In addition he gave a brief summary of the number of institutes that had been held in the Territory, and a few interpretations of the law. The great bulk of the report was a dissertation on the value of moral training in the public schools.[2]

JOHN P. JUDSON (1874-80)

John P. Judson was the third superintendent of public instruction. It was largely through his ability of organizing that the law of 1877 was put on the statute books. The manner in which this was done is shown in the chapter dealing with teachers' organizations. In his report of 1879, he stated that, although the county superintendents had been asked specifically to point out

[1] Lane, (Joe), M.D. *Puget Sound Herald*, Jan. 8, 1863.

[2] The Rev. Nelson Rounds, D. D., was born in Winfield, New York, May 4, 1807, and died at his residence near Vancouver, Washington, January 2, 1874. As his parents were poor, he obtained his education by his own exertions, paying his way by teaching or manual employment. He studied three years at Hamilton College, and then went to Union College, where he graduated in 1829 at the age of twenty-two.

Dr. Rounds entered the traveling ministry of the Methodist Episcopal Church in the year 1831. He served at two different times as professor of ancient languages in a seminary in New York. In 1844 he was elected by the general conference as editor of the *Northern Christian Advocate*, which position he occupied for four years. The degree of D.D. was conferred on him by Dickinson College, Carlisle, Penn. In 1868 he was elected president of Willamette University, Salem, Ore., and presided over this institution for two years with marked ability and success, though much of the time in poor health. Resigning in 1870, he moved to Washington Territory, and was elected by its legislature a territorial superintendent of public instruction. *Report of United States Commissioner of Education*, 1873, p. 466.

the defects in the law, none of a serious character had been indicated. The changes he recommended in that report were minor.

His term was one of the most important in all territorial history:

1. Because of its length; he served six years. This long service of Mr. Judson was due in part to the fact that Mr. Sovey in the legislature refused to vote for any of the nominees for that office, and was thus able to prevent the election of Mr. Moore of Walla Walla, who was a strong bidder for the term beginning in 1876.[4]

2. Because of the passage of the law of 1877. The features of this law are enumerated in another place. Although the proposed legislation had wide advertising, there can hardly be a question that Mr. Judson was the inspiring force behind the movement.

3. Because of the growth in professional spirit and usefulness through the instruments of county and territorial institutes.

4. Because of the initiation of the Board of Education. This deserves special mention.

First Board of Education

The first board of education met on April 1, 1878. It was composed of Superintendent John P. Judson, the Hon. Thos. Burke, of King County, Mr. Charles Moore of Whitman County, and Mrs. Ruth E. Rounds of Clarke County. Regulations were established for the government of the common schools and the examination of teachers and a uniform series of text books was adopted, during the first year's operation of the board.

For the first time there was laid down a set of rules and regulations that governed the teachers and pupils in their work. Space does not admit of a full treatment of these rules and regulations.[5] Suffice it to say that there were detailed duties of teachers to the school authorities, to pupils, to parents, and others; pupils' duties to the school, to teachers, to property and to themselves; regulations for the graded schools; and a course of study for the schools. This board of education made a list of questions to be used in all counties for the examination of teachers—the first time this was put on a uniform and fair basis.

[4] *Puget Sound Courier*, Nov. 27, 1875

[5] A detailed report of these will be found in the Report of Superintendent of Public Instruction, 1879, pp. 13-23.

Another splendid work done by the board was the adoption of a uniform series of texts. Superintendent Judson reports with regard to this:

"Having for years experienced the annoyance and expense incident to the promiscuous use of all kinds of text books, the Board of Education, at its first meeting took steps to secure uniformity. Notice was published in each Judicial District of the Territory, that at the next meeting of the Board a uniform series of text books would be adopted, provided publishers would furnish us books under the peculiar provisions of our law . . . Many publishers declined to send books when they ascertained that under the provisions of our statutes they were required to exchange their new books, if adopted, even for our old ones."[6]

The board submitted its list to the Territorial Institute in October, 1878, in order to get the opinion of the educators on them. The board approved the selection made by the institute.[7]

JONATHAN S. HOUGHTON (1880-82)

In his report of 1881, Dr. Houghton made some rather constructive recommendations to the legislature. He urged them to place the office of territorial superintendent upon a better basis. The appropriation allowed for the superintendent was insufficient to allow him to be of the best service to the territory. He asserted that the great flow of immigration since 1877, had more than doubled the number of school districts in many of the eastern counties.

"Our population is not yet sufficiently enthusiastic on educational matters, to support a journal in this Territory, devoted wholly to school interests; so for that reason, the superintendent should visit a large number of school districts, and talk with the people on this vital subject. The majority of people are willing to do all that is necessary to support our public schools, but, in many instances, they do not know what is really necessary. I have found some individuals who did not seem to understand that blackboards, even were really necessary in the schoolroom of today."

[6] Report of Superintendent of Public Instruction, 1879, p. 31.

[7] John P. Judson was born in Prussia in 1840. His father emigrated from Prussia in 1845 and settled in Illinois, where he resided until 1853. When a young man Mr. Judson earned money in mining on the Fraser River with which he paid for two years schooling at Vancouver. In 1863 he was territorial librarian and chief clerk of the House of Representatives one year later. He was employed as school teacher until he finished his law studies in 1867. He was a partner in the law office of Judge McFadden. He became president of the Tenino-to-Olympia railway and was appointed superintendent of public instruction in 1874.—*Bancroft's Works*, Vol. XXXI, p. 295.

The proposed law suggested some rather interesting clauses according to the newspaper. It suggested that the clause which proposed to "constitute every little school board a court to decide what 'publication is of a partisan or denomination character, or what political, sectarian or denominational doctrine'," should be given close scrutiny. Further,

> "We are not prepared to pronounce in favor of the one man power implied in the first section, authorizing the Territorial Superintendent to say what books shall be used throughout the Territory, what course of study, and rules and regulations for all public schools in the Territory shall be adopted. This is decidedly too much power to vest in one man, who can be hired for three hundred dollars per year."

The bill was submitted to the various educators of the Territory before final consideration by the legislature. Despite the impetus given the matter at the territorial convention in 1873, and the work of the territorial superintendent, there were only two changes in the law of 1875. The first, an amendment, the other an added section granting power to school districts to vote a special tax of two mills. This was not sufficient to satisfy educators, and it remained for further work on their part, which as we shall see was undertaken the following year.

THREE PHASES OF ORGANIZATION

The history of teachers' organizations in the territorial years may be divided into three distinct periods. The first was centered around the problem of finding suitable texts and establishing uniformity; the second period had as its aim the passage of a better school law; the third aimed at better instruction in the schools. The first period found practical evidence in the conventions called at Olympia by D. R. Bigelow; the second was in evidence in the educational association of 1873 and the early Washington teachers' institutes, the first of which met in 1876. The later institutes turned their attention almost entirely to the matter of better teaching methods and administration of schools.

With this brief summary of the general trend we will proceed with the consideration of the next attempt to organize the educators of the Territory.

THE WASHINGTON TEACHERS' INSTITUTE

The first Washington teachers' institute convened at Olympia, July 26, 1876, at the call of the Hon. J. P. Judson, superintendent of public instruction. The aim of the meeting was expressed in the address of superintendent Judson, who called attention to the "unfortunate condition of the common school interests, consequent upon ill-considered and poorly digested school laws," and urged "zealous and harmonious action toward securing the proper and efficient school legislation."[8]

Thus we have the keynote of the convention. While some of the people present objected to tampering with the law, the Superintendent with others claimed that an entirely new law was necessary; hence, a committee consisting of J. P. Judson, J. E. Meeker, Geo. F. Whitworth, Mrs. A. J. White and Mrs. J. B. Allen, were appointed to draft a new school law to be submitted to the next legislature for adoption.

The institute takes a very prominent place in the history of school legislation in Washington. The resolutions which were adopted, and which expressed the research of this body of educators and which were incorporated in the proposed new law touched upon the following matters:

1. The territorial school tax should not be more than six mills nor less than four mills on the dollar.
2. The legal voters of any school district might vote a special school tax for school purposes, not to exceed ten mills on the dollar, and that not more than one special school tax shall be voted in one year.
3. Teachers' certificates should be of three grades and were to run for not more than two years.
4. County teachers' institutes were recommended to be held in every county each year, and that attendance at same was to be made compulsory.
5. A special temporary certificate to be issued by the county superintendent of schools, to be used until a regular certificate could be obtained.
6. Normal school graduates from any state to be allowed to teach in Washington without examination.
7. The institute went on record as favoring the adoption of

[8] Clark, (J. E.), *Washington Teachers' Institute*, p. 25.

uniform texts for all the schools at the first meeting of the institute after the passage of a new law, the texts to remain in use four years.

8. The establishment of a normal school or a normal department in connection with the Territorial University, for the instruction of teachers.

The leadership in this matter was taken by J. E. Clark, who claimed that persons wishing to adopt teaching as a profession should enter a normal school. The stand he took on granting immunity from examination to teachers who were graduates of normal schools of other states goes to make him the leader in the normal school movement in the Territory.

9. The establishment of a territorial board of examiners or board of education was advocated, the territorial superintendent being ex-officio chairman of the board.

Increased salary and duties for the superintendent of public instruction were advocated as shown in the following resolution:

"Resolved: That this Institute deem it important that the Territorial Superintendent should be one who is well qualified to teach, and of high mental and moral attainments; that it should be his duty to visit every County in the Territory at least once a year, and secure, so far as practicable, the organization of Teachers' Institutes, both County and Territorial; and in order to enable him to do this, and to discharge the other duties of his office, such as correspondence, making reports, etc., he should receive a salary of not less than six hundred dollars per annum, and all necessary expenses incurred for stationery, office rent, traveling, etc. He should be ex-officio Chairman of the Board of Education, and be required to attach his official signature to all certificates and documents issuing from said Board."[10]

In addition to the above, there was a long discussion on the necessity of the county superintendent in the school system. Suggestion was made that the office be abolished. This aroused much opposition, which was led by Nathan S. Porter of Olympia. He said in part:

"A glance at the school systems of some of the older States, it seems to me, is sufficient to convince those who may consider the subject, that the most important of all school officers is the County Superintendent. In a measure he is under the control of a superior officer and yet empowered with functions which the State Superintendent does not possess. I allude to the proper distribution and disbursement of the county school funds.

"It would be impossible for the State Superintendent to visit all the schools in his State, and yet how essential that they should be visited, while in session, by some superintending officer? In short, without local superintendence, schools as well as all other societies must fall short of accomplishing all they are designed to accomplish, if they do not in some instances fail entirely.

"The duties of a County Superintendent are too multifarious to be enumerated here; all of which are important to a perfect school system. What other officer can perform those duties? To permit directors of districts to examine teachers and issue certificates to them, would very soon lower the standard of qualifications and institute favoritism."[11]

[10] Clark, (J. E.), *Washington Teachers' Institute*, p. 27.

However, the institute decided that the new law should provide for the county superintendent.

The second annual meeting was held at Seattle, July 18, 1877. Those present were:

"Rev. G. F. Whitworth, E. S. Ingraham, Rev. Daniel Bagley, C. D. Young, Miss Hattie Young, Mrs. H. Pierce, M. W. Thayer, Rev. J. F. Ellis, Miss Lena Smith, Miss Eugenie McConaha, and Rev. D. W. Macfie, from Seattle; R. E. Ryan, Superintendent of Jefferson County, from Port Townsend; C. O. Beau and Miss Frances Meeker, from Pierce County; J. E. Clark, from Olympia."[12]

With this meeting we have the inception of the idea of improvement of teachers in service. Not the main part of the program was taken up with the idea, however, as the consideration of a new school law absorbed much of the time. Of interest in this sphere was an address by L. P. Venen on "The Necessity for a National School System."

A third meeting was held on October 10, 1877, at Olympia. This special meeting was presided over by Mr. J. P. Judson and continued in session four days.

"Considering the tedious, slow and difficult work to be done—reading, considering, altering, amending and perfecting the proposed school law—the attendance was large. E. S. Ingraham, Superintendent of King County, O. S. Jones, Assistant Secretary, and Rev. Geo. F. Whitworth were present from Seattle. About two hundred copies of the proposed law were printed at the *Standard* printing office in Olympia, several weeks prior to the meeting of the Institute. These were distributed throughout the Territory, but the time to elapse before the assembling of the Legis-

[11] Clark, (J.E.), *Washington Teachers' Institute*, p. 28.
[12] *Ibid.*, p. 31.

lature was scarcely sufficient for general criticism. In due time the proposed law was submitted to the Legislature and after very few alterations by that body it was enacted as the school law of the Territory."[13]

Thus we have concrete evidence that the educators of the Territory drafted the law of 1877. This law was the most applicable law that the Territory had had. Experience in the needs of the Territory gave definite shape to the recommendations made by the teachers. It was the first time in our history that educators had the means to make their opinions felt. Ever since that day, the educational legislation has been more or less the direct result of the best educational thought. It is quite in line with the above statement to give a brief summary of the chief changes incorporated in the law of 1877, so that comparison may be made with the discussions of the educators as set forth earlier in this chapter. Space will not permit the incorporation of the entire act.

1. The territorial superintendent had considerable additional duty imposed upon him, such as visiting schools, addressing the people on educational matters, holding annually a territorial teachers' institute and aiding in establishing county institutes. He was allowed, instead of the scanty pittance of $300 annually, granted by law in 1871 and 1873, $600 a year, with a possible $300 more for traveling and incidental expenses.

2. County superintendents were forced to forfeit $100 from their salaries for failure to make reports to territorial superintendent as required by law.

3. Each county containing ten or more school districts was required to hold annual institutes, which teachers must attend.

4. The establishment of union or graded schools was authorized upon vote of majority of voters in two or more districts. This was a type of consolidation. Single districts were given power to establish graded schools.

5. Children of ages eight to sixteen were compelled to go to school in towns of more than 400 inhabitants, for at least six months a year.

6. County commissioners were compelled to levy an annual tax of not less than three nor more than 6 mills to support the county schools.

[13] Clark, (J. E.), *Washington Teachers' Institute*, Vol. I, p. 39.

7. School age changed to five to twenty-one instead of four to twenty-one.

8. Women were made eligible to all school offices.

9. Territorial superintendent appointed by the governor for term of two years, with consent of the Council.

10. Territorial board of education was created with power to adopt uniform texts, prescribe rules for government of the schools, to issue territorial certificates, make examination questions for county superintendents, etc.

11. County superintendent's duties were enlarged. Salary also increased.

12. County board of examination provided for the conducting of semi-annual examinations of those desiring to teach.

"The public school system has been much more efficient in every particular under the operation of the new school law, which went into effect January 1, 1878. The law was framed by the chief educators of the Territory, who were called together for this purpose once in 1876 and twice in 1877. It was also printed and distributed over the Territory for criticism, and was generally approved before being submitted to the legislature."[14]

Thus has been established rather clearly the service of educators in improvement of the educational system of the Territory.

LATE TERRITORIAL INSTITUTES

The character of the later institutes changed. No longer were educators working for revision in the law, as the act of 1877 was the culmination of a long struggle to put an adequate organization into operation. There was, therefore, no immediate need for further legislation at once. Hence, the change of character of deliberations of this annual body.

The third annual meeting at Olympia in October, 1878 recommended the series of text books to the board of education. In fact, the board was in session at the same time that the institute was held. Mr. Judson informed the institute on the last evening that the board had adopted the books recommended by the various committees. The tenor of this session will be explained by listing a few of the subjects discussed: "Method of Teaching Arithmetic to Primary and Intermediate Classes;" "Object Teach-

[14] Report United States Commission of Education, 1879, p. 288.

ing;" "How Shall We Teach History of the United States?" "Punishment in the School Room," and "To What Extent Should Oral Instruction be Used in Our Public Schools?"

At the fourth and fifth annual meetings of 1879 and 1880, we have the same general trend. To the student of methods the proceedings of the fifth meeting at Seattle, a pamphlet of eighty-eight pages, is a very valuable contribution. At the meeting the institute split into an eastern and western division, in order to make it possible for all teachers to be able to attend. As to the success of this plan there seems to be much doubt. Said the *School Journal* of October, 1884:

"I notice with pleasure that the two divisions of our Territorial Institute have unanimously agreed to consolidate, and that the next meeting will be held at Vancouver in August, 1885. The division of the institutes occurred in 1880, and hence we have had a pretty fair trial of what they should accomplish. What is the result? So far as the writer has been able to observe, the institute has hardly equaled the associations of teachers in the larger counties. In 1882 at Spokane Falls, the attendance was not large; in 1883 at Walla Walla, only a half dozen teachers from outside counties attended; and at Dayton this year, we note a similar result. Perhaps our friends in Western Washington have fared better; but at all events, the teachers have decided to consolidate, and therefore we rejoice."[15]

At the meeting of the western division at Tacoma, August 16, 1881, the chief emphasis was again placed on better teaching. In a resolution the legislature was called upon to support liberally "our young but vigorous university, and provide ample means to make its struggling normal department all that it should be to meet the growing demand for good teachers in Washington Territory."

This then summarizes the aim and purpose of the state institutes during the last decade of territorial history. They tended to become normal institutes, as did the county institutes.[16]

In 1884 the territorial institutes were held at Dayton and Tacoma, on August 4 and August 18, respectively.

[15] McCully, (F. M.), From papers loaned through the courtesy of Mrs. F. M. McCully.

[16] Dr. Henry Cremer's thesis on "History of Teacher Training in the Public Higher Institutions in Washington," deals exhaustively with this phase of teachers' institutes. I am, therefore, abbreviating matters which pertain more particularly to this thesis.

At the joint institute at Vancouver, August, 1885, the matter of school law was again taken up, but the recommendations were chiefly of a minor nature. There were no radical changes. R. C. Kerr recommended in his report that the law be so amended as to require a normal institute for each judicial district presided over by a member of the territorial board of education from that district or a council district institute.[17]

This recommendation was adopted by the legislative assembly and four judicial district institutes were held in 1886. These were: the first judicial district at Colfax, attendance 60; second at Olympia, attendance 50; third at Seattle, attendance 100; fourth at Spokane Falls, attendance 60.

In 1887 they were held at Walla Walla, North Yakima, Tacoma, and the one which was planned for Port Townsend was not held. The year following they were held at Waitsburg, Olympia, Port Townsend, and Spokane Falls. In addition, then, to the county institutes these were held as normal institutes to improve teachers in service.

THE STATE TEACHERS' ASSOCIATION

With this background we can more readily appreciate the change in the working organization of teachers which came with statehood. Because of the fact that teachers' organizations had their origin in early territorial times, and in view of the further consideration that the State Teachers' Association was but a continuation of the earlier legal body, which went out of existence with the coming of statehood, and also because of the fact that teachers' organizations assumed a leading part in the history of education of Washington, the beginning will be given here, although it does not directly belong to the territorial period.

"In response to a call issued by the Thurston County Teachers' Association a large number of teachers of Western Washington and a few from Eastern Washington assembled at Olympia on Tuesday, April 3, 1889. One day and two evening sessions were held, and much interest was manifested and various subjects presented, a program having been prearranged. During this meeting the organization of the State Teachers' Association was effected. The officers of the Thurston County Teachers' Association were made the temporary officers. Officers elected for the ensuing year were as follows: President, J. H. Morgan of Ellensburg; Vice-Presidents, R. C. Kerr of Walla Walla, E. B. Bryan of Montesano, H.

[17] Report of Superintendent of Public Instruction, 1884-85, p. 13.

XVI

CONCLUSIONS

When the State of Washington was formed in 1889, there remained much to be done in looking toward the perfection of the school system. The formative period was over. The great struggle to establish the system was passed. The form of the system was well molded; there was no longer a question as to the pattern. Yet the structure needed refinement and polish.

The history of the state educational system, which yet remains to be written, is not a history of pioneer struggles to establish schools, nor even a struggle for definitions of authority, but it is rather the history of state responsibility in fostering equal opportunity for each child in the State, and higher standards of teaching. The early system was characterized by a sort of autonomous organization. Districts managed their educational affairs with little thought of responsibility toward other districts. The struggle for uniform texts, the failure to make reports as required by law, and the county certification, are evidences of a struggle of centralization and equalization as opposed to autonomy.

This tendency parallels the evolution of society in the Northwest. At first every individual had to provide his own means of transportation, his own protection, and in truth, his own law. Later this isolation of individuals gave way to highly organized communities, which necessitated complex laws and numerous administrative bodies, all controlled by a common interest. School districts, first isolated, followed this general process of evolution, emerging as units of a complex system, controlled for the general welfare.

While this thesis does not deal with the history of the state period, the territorial period was part of the general rise of a school system which possesses certain characteristics today, and it may be recognized that many of these characteristics had their origin in the territorial era. In truth, some of the present day characteristics might be traced back into the pre-territorial time, to the Oregon period, and even further into the past.

Our state organization centers around a state superintendent, county superintendents, and boards of directors of three or five

persons, according to the class of the district. It is a district system, in which there are now many union and consolidated districts. Matters of local importance are in the hands of local boards; matters pertaining to law, certification, and teachers' training are in the hands of the State Superintendent, State Board of Education and other boards. Thus we have local autonomy combined with centralized control. The State levies taxes which, added to the interest on the permanent fund, is distributed to the districts as an aid and for purposes of equalization. The county also raises money by taxation; institutes are held in each county each year at which all teachers must attend. Three splendid normal schools train teachers for the elementary schools.

One has only to review the pages of this thesis to understand the origin of the office of State Superintendent and the struggle through which it went. The office was tried and abandoned once in Iowa, Oregon, and Washington. It revival in the early 'seventies was due to the insistence of the governor of the territory.

The county superintendent has retained his function and power ever since the passage of the law of 1854. In fact the office had its inception during the Oregon time, when it was known as commissioner. Only once in Washington history has there been found any attempt to abandon the office, namely, at the Territorial Institute in 1876. On the other hand, the powers have been somewhat extended. The county superintendent remains the same political factor that he has been for nearly three-quarters of a century.

The district system may be traced through our law back to New England, although it was first incorporated in our territory by the law of 1849.

Union or consolidated districts had their origin in the law of 1877, as did the Territorial Board of Education, which later became the State Board of Education.

The permanent school fund had its beginning in 1849. Lands given by Congress were in safe keeping until such time as Washington became a State, when they were made effective.

County institutes originated in territorial days. Teachers' organizations or conventions for the betterment of themselves and the educational system, began with the formation of the Territory for the purpose of text book selection, and received an im-

petus of a more serious nature in 1868. They became powerful bodies about the end of the territorial period.

School law is the result of educational thought crystallized after study and deliberation. It is a result rather than a cause of action. If one should attempt to analyse the evolution of the enactment of school law, he would probably find that the growth is dependent in its greatest sense upon the progress of the thought of the leaders in the field of education. The entire history reveals that the initiative has been taken by educators themselves. Law makers pass laws based on their recommendations, commensurate with the conditions of the territory.

An attempt has been made to portray the thought that has given rise to our system rather than to record the evolution in the law itself. In taking such a course it has been necessary to sacrifice much that is needed to complete the evidence because of lack of records, while the easier path would have led to the law, all of which is easily accessible.

In the foregoing pages much material has been reviewed, some of which greatly in detail, possibly more than would be necessary in another type of work. This liberality in detail in certain portions is inserted because of its value in establishing a viewpoint. The salient contributions that evolve from the presented material are:

1. The common school system of this State retains the chief characteristics of the New England organization, which came through Oregon, especially through the framer of the law of 1849.

2. The first schools were church or private schools, which may be termed public-private schools.

3. The early administrators were clergymen.

4. Education as a profession did not come into existence until about the year 1868.

5. The greatest advance in the system came immediately after educators organized into working institutes. The law of 1877 was the direct result of educational consciousness.

6. Since about 1870 the molding of the educational system has been most substantially in the hands of the educators themselves. The school law reflects the best thought of the educational leaders.

7. The Territorial Teachers' Institute was the chief channel of expression for educators during the territorial period. Out of it rose the system of teacher training, which culminated in the establishment of the State normal schools.

TERRITORIAL COUNTY SUPERINTENDENTS

A revised list of territorial county superintendents will be found in the original thesis which is on file at the University of Washington library.[1]

[1] Cf. Troth, (Dennis C.), History and Development of Common School Legislation in Washington, *University of Washington Publications in the Social Sciences*, Vol. 3, No. 2, pp. 184-191.

TAB 25

BUILDING A STATE
WASHINGTON
1889-1939

EDITORS

CHARLES MILES . . . . . MAY—AUGUST, 1939
O. B. SPERLIN . . SEPTEMBER, 1939—SEPTEMBER, 1940

Commemorative of the Golden Jubilee Celebration

Washington State Historical Society Publications
VOLUME III

PUBLISHED IN OBSERVANCE OF THE FIFTIETH
ANNIVERSARY OF WASHINGTON'S
STATEHOOD

The past fifty years in the Pacific Northwest have witnessed an increasing readiness of all churches to unite on truly imperative religious truths. Old-time squabbles over denominational tenets have largely disappeared, giving place to Bible interpretations on factual and scientific agreements. Catholic, Lutheran, Calvinist, Armenian, all have vital points in agreement, and must come together on the more essential Bible evidences. In this compact of religious unity the churches in America are giving the nation its strongest support. Quakers prayed for the success of George Washington and his army, and every military campaign in the growing States has called upon all the churches for support and received it. Tolerance of other beliefs has come to stay and must dominate America, for freedom's sake and the rescue of imperiled nations.

One result of this more friendly compact has witnessed for the common good the allocation of new communities to such denominations as may best serve the expressed desires of the people. No state has responded more readily than our own. Rather than allow over-crowding, towns are allotted according to established rules, and the selected denomination broadens its membership regulations and ministers are to avoid controversial sermons and encourage a united fellowship. This course was emphasized during the World War and remains popular especially in growing areas, and awakens communities heretofore over-crowded by too many contending zealots. One valuable result has come in discovering more points of agreement than doctrinal differences, so binding the people in one united Christian compact.

The modern Church retains all Christian principles in its scientific quest for the real mind of Christ. This last half century has contributed greater sympathy toward all peoples, and should set itself for better days, numerically, socially, intellectually, with less sectarianism and more understanding. This mixture of many minds must solve moral and religious problems more acceptably than have past denominational contests. Western Indian families deserved more evident Christian consideration when over-ridden by white migrations. So they have welcomed Shakerism. Poverty-stricken Mormons have become prosperous citizens and many lesser cults in their integrity have grown into substantial factors in the welding of this commonwealth. Perhaps the day will dawn, let it be soon, when all followers of Christ will follow Him so closely none may misrepresent Him by selfish and bigoted "isms." So may better progress be realized in all the churches with this common motive of serving humanity in

peace and good will. Modern business and industry are alert and deserve sympathetic coöperation from all churches. Every church may double its efficiency and foresee greater spiritual developments as the State of Washington redoubles in ambitious citizens and vitalizing institutions.

EDUCATION

FREDERICK E. BOLTON

Dean Bolton was born in Wisconsin in 1866. He received his B. S. degree from the University of Wisconsin in 1893, and M. S. from the same institution in 1896. He studied at Leipzig during 1896-7. Having returned to America on a fellowship at Clark University, he received the Ph. D. there in 1898. He was the head of the Department of Education at the University of Iowa, 1901-12. He came to the University of Washington as Professor of Education in 1912. From 1913 to 1928 he was Dean of the School of Education. Since 1928 he has been emeritus dean. He is the author of *Principles of Education*, *History of Education in Washington*, and many other books in the field of education.

TERRITORIAL FOUNDATIONS

When statehood was attained, Washington was fortunate in the solid foundations of education previously laid. Thanks to a generous federal government, provisions had been made possible for the establishment of the common school system, a state university, a state college of agriculture and mechanic arts, and normal schools.

Under the Ordinance of 1787, sections 16 and 36 in every township in new states or territories admitted were allotted by the Federal Government for the support of common schools, and two townships for the support of a state university. In 1862, President Lincoln signed the bill sponsored by Senator Morrill which provided for very generous grants of land for supporting colleges of agriculture in every state and territory in the Union. In 1889, in the enabling act creating the State of Washington, 100,000 acres of land were allotted by the Federal Government for maintaining normal schools.

Washington was also fortunate in 1854, when separating from Oregon and becoming a territory, in enacting a school law almost identical with the one in Oregon. The first governor, Isaac I. Stevens, with remarkable foresight gave expression to the following stimulating prophetic words in his message to the first session of the Legislature in 1854: "Let

every youth, however limited his opportunities, find his place in the school, the college, the university, if God has given him the necessary gifts. Congress has made liberal appropriations for the schools and I will recommend that Congress be memorialized to appropriate land for a university."

The people of the Territory moved rapidly and surely in laying solid foundations for a complete state system of public education. The common schools were launched by the Legislature of 1854; the State University was located in 1855; and the initial steps were taken for providing a College of Agriculture and Mechanic Arts, when the Legislature in 1864 accepted the provisions made by the Federal Government. The College was not opened until 1892. A constitutional provision was voted in 1889 for establishing normal schools. The first two, Cheney and Ellensburg, were established by the Legislature in 1890 and the third at Bellingham in 1893.

The Public School System

The foresight of the Federal Government. The State of Washington has steadfastly believed that the education of the common people is necessary for the development and preservation of a democracy. The classic preamble of the Ordinance of 1787, "Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall be forever encouraged," has motivated many of the educational leaders in Washington.

From the earliest days of statehood the common schools have been one of the most vital concerns of the people. In the pioneer pre-territorial days families were assessed in proportion to the number of children the respective families sent to school. Settlers having no children in school were not assessed. The Legislature in 1854 levied a tax of two mills on all the taxable property of the county, and districts were required to raise an amount equal to the amount allotted to the respective districts by the county. Various modifications were made in the rates during the next thirty years, but the fundamental plan remained the same—the county to provide a certain amount and the local district the rest. The initial Legislature of the State in 1889 strengthened the education laws and gave districts the right to levy up to ten mills on each dollar of assessable property.

The Barefoot Schoolboy Laws. The general plan of raising and distributing revenues for school purposes remained the same as in territorial days until 1895. In that year a new

principle of providing school revenues was initiated in Washington. Through the sponsorship of John Rogers, later Governor of the State, a law was enacted providing that from state funds each district should receive $6.00 for each child of school age in the respective districts. In 1899 the Legislature increased the amount to be allotted from state funds to $8.00 per census child. In 1901 that amount was increased to $10.00 and in 1920 to $20.00. In 1909 a law was enacted requiring the county to pay to each district $10.00 per census child.

In these various laws a new principle of common school support was established. It was a declaration that the State itself should guarantee to each and every boy and girl in the commonwealth the minimum essentials of a common school education. No matter what the financial status of the parents or the community, no matter where their domicile, the State itself expresses in this material way its concern for the education of its future citizens.

Governor John R. Rogers
(1897-1901)
Previous to his election as governor John R. Rogers successfully advocated the "Barefoot Schoolboy" law, introducing a principle of equalization of educational opportunities which has since spread to practically every state in the Union.

The principle was new, and new not only in Washington. This State was a pioneer in the announcement and development of this plan throughout the United States. The wealthier communities everywhere object because they have to pay to the State for other communities larger amounts than they receive in return. But the people of the commonwealth as a whole regard it as a measure of insurance for better citizenship, and the will of the people has been very definitely expressed in favor of these equalizing measures.

Even the foregoing plan was found inadequate. The Public-School Administration Commission, authorized by the Legislature in 1920, urged increased state aid. Dean Cubberley of Stanford was brought in as a consultant. In 1922 there

TAB 26

A Survey of the Common School System of Washington

With Suggested First Steps Toward its Progressive Development and Improvement

BY

THE WASHINGTON STATE PLANNING COUNCIL

THE SCHOOLS OF TOMORROW
A Study in Educational Planning

September 24, 1938

Introduction

"The greatest resource of our State is its young men and women, and one of our most pressing problems is how our schools may better fit them to fill useful places in a changing society."

—Governor Clarence D. Martin of Washington

Few people were in Washington when Phoebe Judson and her husband moved to the Puget Sound country three quarters of a century ago—so few, in fact, that anyone living within a twenty-mile radius was considered a neighbor. In those trying days, the term "neighbor" carried with it an implication of love and sympathy. News traveled slowly, for mail came by way of the Isthmus of Panama and later over the mountains by Ben Holliday's pony express. Life was hard. Says Mrs. Judson, "It was not riches, splendor, fame, or glory we were seeking; but peace and contentment while each was bearing the privations incident to a pioneer life and doing his part to develop a new country."①

The children of the Judsons' day attended a school organized through the volunteer efforts of the families in the community. Largely influenced by the idea of the school district system carried westward by the pioneers, Washington enacted its basic school law in 1854. Early legislation not only made school districts legal self-governing units with the power to levy and collect taxes, but also created the offices of county and territorial superintendent to provide necessary administration and supervision of the schools. So eager were statesmen of the past to preserve and to protect the cultural heritage of all men, that a special article, proclaiming the ample support of education to be the paramount duty of the State, was included in the State constitution.

Our State, then, believes in education, adequately financed and open to all, regardless of race, creed, politics, or social status. Furthermore, the constant desire for improved educational methods is ever apparent. Thus, today, in this vast empire of the Pacific Northwest, with its wealth of natural resources and scenic beauty, a major cultural enterprise stands as a monument to the willing sacrifice and courageous spirit of the citizens of our State. Because of the wisdom and far-sighted leadership of its citizens, this State is the possessor of one of the great systems of public education.

The magnitude of today's school system and its rapid growth is an amazing story. But this tremendous increase in enrollment, particularly in the high schools and in the institutions of higher education, has brought grave problems not only in financing the program, but also in providing effectively for the variety of individual interests and abilities of the large school population of the present day.

① Judson, Mrs. Phoebe—"A Pioneer's Search for the Ideal Home."

Not only has school attendance greatly increased, but pupils remain in school much longer. As late as 1900, only a third of the pupils who had entered the first grade eight years before were still in school, and only one in twenty of those beginners was found in the senior class of the high schools in 1904. But of those who entered the first grade in 1924, four out of five were in the eighth grade in 1932; and two out of three of this beginning class of 1924 were in the senior class in high school in 1936.

High school education was for the few in 1900; now, it is for the many. As a result of this steady pressure of ever-expanding numbers, we now have 340,000 students and 11,000 teachers in our common schools. We have been almost overwhelmed by the engrossing problems incident to this swift and spectacular growth. It is apparent, however, that the number in attendance in our common schools, for a time at least, has reached its peak, if, indeed, a declining birth-rate does not more than counterbalance the large migration of new families into the State. Thus relieved of the worst of the pressure to expand our school facilities, we have an opportunity to look about us—to survey our progress, to examine the other problems, many of them of importance, that have grown up while we were dealing as best we could with our "growing pains."

If our report appears lengthy, we can only say that when we consider the huge volumes of data and the complexity and number of the questions raised, we are rather distressed over the pages we have had to omit.① With deliberate intent to confine ourselves to issues that appear most pressing, our study and report have been limited to the following problems:

Perhaps our most exigent problem is the injustice and hardship resulting from the gross inequalities in taxable wealth and in educational opportunity, thrust upon us by the haphazard and grotesque boundaries of so many of our school districts. These inequalities, including a lack of health services, vocational education opportunities, services for handicapped children, and the like have aroused grave discontent, and call urgently for relief. Our study has convinced the Council, as we believe it must convince any thoughtful student of the school district structure, that financial aid to unsound school districts never will equalize educational opportunity. Hence, our recommendation for a redistricting program.

① A list of supporting documents prepared by the Council during the progress of this study appears on p. 123 of this report. A limited number of copies of these appendices are available for distribution.

injurious to them. In any event, the advantages they once enjoyed are steadily being taken from them by the various equalization measures, resulting in the transfer of an ever-greater share of the cost of education to the State, while the avoidable wastes resulting from the present misshapen district boundaries continue to burden all of us. Thus, what the districts appear to be saving by their isolation is lost again, in one way or another, through new taxes levied by the State for equalization.

6. The traditions of 150 years of local autonomy in primary education are so cherished and so intrinsically valuable to us as a people, that this Council, in framing a plan for study and adjustment of district boundaries, has been, first of all, eager to respect this local initiative. Yet, local district autonomy, so precious to our people, depends directly upon equitable boundaries and wise adjustment of local burdens. The longer these haphazard and unwise boundaries remain unchanged, and the more we lean upon State revenues to correct the inequalities resulting therefrom, the more surely will control over district affairs drift toward the State. We must not perpetuate these abuses; for the longer they remain, the more difficult they will be of cure, and the more they will plague our children and our children's children.

7. How may the State provide for a democratic method of planning a logical and effective school district organization? The plan recommended by the Council, carefully worked out after consultation with many groups, is one which truly embraces the democratic process. School districts will be planned locally to fit community needs, make possible more effective use of school funds, reduce the disparities in economic resources, and secure effective educational organization to meet local requirements. This would be a fundamental step toward true equalization.

Recommendations

On the basis of its findings, the Council recommends:

I. That the school districts of the State, when reorganized, be divided into two classes only:

A. First-class districts—all districts having a population of 10,000 or over.

B. Second-class districts—all other districts.

II. That the State set up the following plan for securing school district reorganization as a step toward further equalization of educational opportunity.

A. Local Committee in Each County for Equalization of Educational Opportunity

A local county committee on the equalization of educational opportunity in each county should be appointed by a special committee composed of the county superintendent of schools, the presiding superior court judge of the county, and a member of the school budget review committee of the county—the latter to be selected by the State Tax Commission. Each local county committee on equalization should be composed of fifteen members, including the county superintendent of schools, a representative of the county planning commission, one representative from the board of directors of each of the three basic classes of school districts within the county, a representative of the State Highway Department from the highway district or districts in which the county is located, and one representative from each of the county commissioner districts within the county. Additional representatives should be selected at large from the county.

B. A State Commission for the Equalization of Educational Opportunity

A temporary State Commission of five members to be known as the Washington Commission for the Equalization of Educational Opportunity should be appointed, without regard to political affiliation, by the Governor for a period of three years. The Commission should appoint, to assist it in the performance of its duties, a director and such employees and assistants as it may deem necessary. It should assist the local county committees on equalization herein provided for by furnishing them the aid of its staff and by supplying forms, statistical materials, maps, and other services.

C. Powers and Duties of Local Committees; Preparation of Plan

1. To make an examination of existing school district boundaries within the county to determine what boundaries stand in the way of providing satisfactorily for the support and operation of common schools and the education of the children. If a committee finds boundaries which, in its judgment, do so interfere, it should prepare a plan for the revision or elimination of these boundaries and the adjustment of those of all contiguous districts so that the boundaries of all school districts, including those which are not altered, shall fit together and form a comprehensive school district plan. The committee should give due attention to the convenience of children attending school; the educational necessities, including the welfare of teachers and school of-

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